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No. 10389

United States
Circuit Court of Appeals

For the Ninth Circuit.

CONSOLIDATED AIRCRAFT CORPORA-
TION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 496

Upon Petition for Review and Enforcement of an Order
of the National Labor Relations Board

FILED

JUL 29 1943

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT 1-A

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI C 1988

Date Filed July 17, 1942

In the Matter of—

CONSOLIDATED AIRCRAFT CORPORATION

(Name of company)

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, AIRCRAFT LODGE NO. 1125, AFL

(Name of charging party)

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that (Full name of company) Consolidated Aircraft Corporation at (Address of establishment) San Diego, California employing (Number) 35,000 workers in (Type of business) aircraft manufacturing has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) and (5) of said Act, in that Consolidated Aircraft Corporation, through its officers and agents, did discharge Arthur J. Fisher on January 1st, 1942, and Oliver H. Williamson on April 14, 1942, because

of their membership and activity in International Association of Machinists, and has at all times since those dates refused to re-employ them, a violation of Section 8, subsection (3) of the Act;

That at all times since June 12, 1941, International Association has been the duly designated bargaining agent of all employees of the company and has been so recognized in a signed agreement by the company, but that at all times since June 12, 1941 the company has bargained in bad faith in the following instances; Given raises to 286 employees to the exact knowledge of the Union, while at no time consulting with the Union in such grants; by giving additional hundreds of increases to certain other employees who have not made known in writing such increases to the Union; that further proof of bad faith in granting increases in considerable numbers in recent weeks is found in the company's knowledge that under its written agreement of wages, hours and working conditions, it is to discuss proposed wage increases for all eligible employees on and after April 1, 1942, many of these employees being the same employees for whom the Union was preparing increase demands; that in 22 specific instances of written record, and numerous other oral statements, the Company has made individual wage agreements with employees, and has in some cases changed rates and scales of pay without consulting the bargaining agent; that prior to February 15, 1942, the company adopted a wage scale in cooperation with other manufacturers and put same into effect without consulting with the Union, and has at all times since refused to

negotiate with the Union in regard to the wage scale; that on or about April 10, 1942 the company arbitrarily raised the minimum requirements of its nurses in its Medical Department without consulting its designated bargaining agent, and by other acts and conduct has not bargained in good faith with its designated agents, a violation of Section 8 (5) and 8 (1) of said Act;

That by the above acts and by discriminating against union committeemen, hindering and preventing them from performing their duties as such committeemen, inducing employees to resign who protested discrimination against union committeemen, threatening the discharge of employees and the cancellation of departmental transfers granted employees if grievances were presented on their behalf, offering rewards to employees to induce them to give up their union membership and union activities, advising employees that the Union would not bargain for them, instructing employees not to remain members of the Union and advising employees that the Union would be of no benefit to them, the Company, through its officers, agents, and employees, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, in violation of Section 8 (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization,

give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS
AIRCRAFT LODGE NO. 1125,
AFL

By ROY M. BROWN

1054 Third St., San Diego, Cali-
fornia (Franklin 8831)

Subscribed and sworn to before me this 17 day of
July, 1942. At Los Angeles, California

DANIEL J. HARRINGTON

Field Attorney

2 copies to Bd. 7/18/42 M. A.

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., hereinafter called the Union, that Consolidated Aircraft Corporation, hereinafter called the Respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, by the Regional Director

for the Twenty-first Region, designated as Agent of said board by its Rules and Regulations—Series 2, as amended, hereby issues its complaint and alleges the following:

1. Respondent, Consolidated Aircraft Corporation, is, and at all times herein alleged, was, a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at Lindbergh Field in the City of San Diego, County of San Diego, State of California, hereinafter called the San Diego plant, where it is engaged in the design, manufacture, development, and sale of aircraft, aircraft parts, and accessories.

2. Respondent in the course and conduct of its business, as set forth in paragraph 1 above, causes and has continuously caused large quantities of materials to be purchased, obtained, shipped, and transported in interstate commerce from and through states of the United States other than the State of California to its San Diego plant in the State of California and causes and has continuously caused large quantities of products designed, manufactured, and developed at its San Diego plant to be sold and transported in interstate and foreign commerce to, into and through states of the United States other than the State of California and into foreign countries

3 International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., is a labor organization within the meaning of Section 2, subsection (5) of the Act.

4. Respondent, by its officers, agents and employees, including, without limitation, A. Vernon, W. M. Shanahan, H. Liegel, S. Powell and E. Stewart, while engaged at its San Diego plant, as described in paragraphs 1 and 2 above, during February 1940 and during the period from May 1941 up to and including the date of this Complaint, discriminated against union committeemen, hindered and prevented them from performing their duties as such committeemen, induced to resign employees who protested discrimination against union committeemen, threatened the discharge of employees and the cancellation of departmental transfers granted employees if grievances were presented on their behalf, offered rewards to employees to induce them to give up their union membership and union activities, advised employees that the Union would not bargain for them, instructed employees not to remain members of the Union, and advised employees that the Union would be of no benefit to them.

5. Respondent, while engaged at its San Diego plant as described in paragraphs 1 and 2 above, did, on or about January 1, 1942, discharge Arthur J. Fisher and has at all times since said date refused to reinstate the aforementioned employee, for the reason that said employee joined and assisted the Union and engaged in concerted activities with other employees for their mutual aid and protection.

6. Respondent, while engaged at its San Diego plant as described in paragraphs 1 and 2 above, did on or about April 14, 1942, discharge Oliver H. Williamson and has at all times since said date refused

to reinstate the aforementioned employee, except that on or about May 1, 1942, Respondent re-employed said employee with prejudice, however, to the rights and privileges to which said employee was and is entitled, for the reason that said employee joined and assisted the Union and engaged in concerted activities with other employees for their mutual aid and protection.

7. Respondent, by its acts and each of them, as set forth in paragraphs 5 and 6 above, did discriminate in regard to hire and tenure of employment of its employees and did thus discourage and is thus discouraging membership in the Union, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subsection (3) of the Act.

8. A unit for the purpose of collective bargaining composed of all hourly paid employees and salaried inspectors at Respondent's San Diego plant, excluding supervisory inspectors and confidential clerks, insures to Respondent's employees the full benefit of the right to self-organization, and otherwise effectuates the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

9. Prior to June 12, 1941, and at all times thereafter, a majority of Respondent's employees in the unit set forth in paragraph 8 above, did designate the Union as its representative for the purposes of collective bargaining. By virtue of the aforesaid designation the Union is and at all times since June 12, 1941, has been the exclusive bargaining representa-

tive of all employees in the unit set forth in paragraph 8 above, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

10. Respondent, while engaged at its San Diego plant, as described in paragraphs 1 and 2 above, on or about June 12, 1941, and at all times thereafter, refused and failed, and does now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of all employees in the unit set forth in paragraph 8 above, and by such acts, and by each of them, did engage in, and is now engaging in, unfair labor practices, within the meaning of Section 8, subsection (5) of the Act.

11. Respondent, by its acts and each of them, as set forth in paragraphs 4, 5, 6, 7 and 10 above, did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage, and is thereby engaging in, unfair labor practices, within the meaning of Section 8, subsection (1) of the Act.

12. The aforesaid acts of Respondent, as set forth in paragraphs 4, 5, 6, 7 and 10, inclusive, above, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subsections (1), (3) and (5), and Section 2, subsections (6) and (7) of the Act.

13. The aforesaid acts of Respondent as set forth in paragraphs 4, 5, 6, 7, and 10, inclusive, above, oc-

currence in connection with the operations of Respondent, described in paragraphs 1 and 2, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 23rd day of July, 1942, issues its complaint against Consolidated Aircraft Corporation, Respondent herein.

[Seal]

WILLIAM R. WALSH

Director, Twenty-first Region
National Labor Relations
Board
808 U. S. Post Office and
Courthouse
Los Angeles, California

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 18th day of August, 1942, at 10:30 o'clock in the forenoon at the Conference Room, Second Floor, Chamber of Commerce Building, San Diego, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Second Amended Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Region, with offices at 808 U. S. Postoffice and Courthouse, Los Angeles, California, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 23rd day of July, 1942.

[Seal]

WM. R. WALSH

William R. Walsh

Regional Director.

National Labor Relations
Board

Twenty-first Region

808 U. S. Postoffice & Court-
house

Los Angeles, California

BOARD'S EXHIBIT No. 1-D

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, deposes and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 23d day of July 1942, I served by postpaid registered mail, bearing Government frank, a copy of Complaint, Notice of Hearing, Second Amended Charge to the following named persons, addressed to them at the following addresses:

Consolidated Aircraft Corporation
Lindbergh Field
San Diego, California

International Association of Machinists
Aircraft Lodge No. 1125, A.F.L.
1054 Third Avenue
San Diego, California

MARION RIEMER

Subscribed and sworn to before me this 23rd day of July 1942.

[Seal]

LILLIAN D. LYONS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 24, 1943.

BOARD'S EXHIBIT No. 1-E

[Printer's Note: Board's Exhibit No. 1-E consists of two registered mail receipts and two return cards. Registered Mail receipt No. 395126, dated Los Angeles, Calif., July 23, 1942. Return Card receipt for Registered Mail No. 395126 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by International Assoc. of Machinists, by N. Christian. Date of delivery, 7-24, 1942. Registered Mail receipt No. 395127, dated Los Angeles, Calif., July 23, 1942. Return Card receipt for Registered Mail No. 395127 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by Consolidated Aircraft Corp., San Diego, Calif., by M. R. Powdrill. Date of delivery, July 24, 1942.]

BOARD'S EXHIBIT No. 1-F

[Title of Board and Cause.]

MOTION FOR BILL OF PARTICULARS

Respondent, Consolidated Aircraft Corporation, asserts that the complaint herein and the charges thereto annexed, upon which the complaint is based, fail to state with sufficient definiteness or certainty any act of omission or commission on the part of the respondent so as to enable the respondent to make and properly prepare its defense with respect to the allegations and alleged charges set forth in the complaint, and that the complaint fails

to state the date or time when the acts constituting the said alleged charges were committed, or the name or names of the persons acting on behalf of the respondent who committed such acts, and that it would be hazardous and a denial of due process of law to the respondent to require the respondent to proceed with the hearing on the complaint unless the complaint is amplified by way of a bill of particulars setting forth the details requested by this motion; and therefore respondent demands that such a bill of particulars be furnished to it in due and reasonable time prior to the hearing herein, setting forth in detail the following:

(1) What act or acts were committed or omitted to be done by respondent, its officers, agents, and employees, during February, 1940, and during the period from May, 1941, up to and including the date of the complaint (July 23, 1942) in discriminating against union committeemen in hindering and preventing them from performing their duties as such committeemen, in inducing to resign employees who protested discrimination against union committeemen, in threatening the discharge of employees and the cancellation of departmental transfers granted employees if grievances were presented on their behalf, in offering rewards to employees to induce them to give up their union membership and union activities, in advising employees that the Union would not bargain for them, in instructing employees not to remain members of the Union, and in advising employees that the Union would be of no benefit to them; the name or names

of the officers, agents, and employees of the respondent, other than A. Vernon, W. M. Shanahan, H. Liegel, S. Powell, and E. Stewart, who are alleged to have committed such acts; the dates when such acts were committed; the names of the union committeemen against whom respondent, its officers, agents, and employees are alleged to have discriminated, and who are alleged to have been hindered and prevented from performing their duties as such committeemen; the name or names of the employees who are alleged to have been induced to resign because of alleged protests against alleged discrimination against union committeemen and the dates when such acts were committed; the name or names of the employees who were allegedly threatened with discharge if grievances were presented on their behalf, and the time when such acts were committed; the dates when the respondent, its officers, agents, and employees, allegedly threatened the cancellation of departmental transfers granted employees, and the particular acts with reference thereto; the dates when the respondent, its officers, agents, and employees, allegedly offered rewards to employees to induce them to give up their union membership and union activities, and the names of such employees; the names of employees who were allegedly advised by respondent, its officers, agents, and employees, that the union would not bargain for them, and the dates when such acts were committed; the names of employees who were allegedly instructed by respondent, its officers, agents, and employees, not to remain members of the union,

and the dates when such acts were allegedly committed; and the names of the employees who were allegedly advised by respondent, its officers, agents, and employees, that the union would be of no benefit to them, and the dates when such acts were allegedly committed.

2. The specific acts constituting the charge that respondent on or about June 12, 1941, and at all times thereafter, refused and failed, and does now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours of employment, and other conditions of employment, with the Union as the exclusive representative of all employees in the unit set forth in paragraph 8 of the complaint, setting forth in detail the names of the officers, agents, and employees of respondent who allegedly committed such acts, and the dates when the same are claimed to have been committed.

3. The specific acts constituting the charge, as set forth in the complaint, that respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees, in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage and is thereby engaging in unfair labor practices within the meaning of Section 8, Subsection (1) of the Act, setting forth in detail the names of the officers, agents, and employees of respondent who allegedly committed such acts, and the dates when the same are claimed to have been committed.

And you will further please take notice that unless respondent is served with a bill of particulars

setting forth the details above requested in a due and reasonable time in advance of the hearing herein, it will be unable to proceed with said hearing and will demand an adjournment thereof for a reasonable time after the service of such bill of particulars.

Dated: July 30, 1942.

CONSOLIDATED AIRCRAFT
CORPORATION

(Sgd) I. M. LADDON

Vice President and General
Manager

To:

National Labor Relations Board

21st Region

808 U. S. Post Office and Courthouse

Los Angeles, California

International Association of Machinists

Aircraft Lodge #1125, A.F.L.

1054 Third Street

San Diego, California

BOARD'S EXHIBIT No. 1-G

[Title of Board and Cause.]

ANSWER

In answer to the complaint filed in the above entitled proceeding, respondent, Consolidated Aircraft Corporation, without prejudice to its motion for a bill of particulars heretofore filed herein, and without waiving the same, admits, denies and alleges as follows:

1. Respondent admits the allegations contained in paragraphs 1, 2, 3, 8 and 9 of the complaint.

2. Respondent denies each and every allegation contained in paragraphs 4, 7, 10, 11, 12 and 13 of the complaint.

3. With respect to the allegations contained in paragraph 5 of the complaint, respondent admits that while engaged at its San Diego plant as set forth in paragraphs 1 and 2 of the complaint, respondent did, on or about January 1, 1942, discharge Arthur J. Fisher, an employee of respondent, and has at all times since said date refused to reinstate said employee. Respondent denies each and every other allegation contained in said paragraph 5.

4. Further answering the allegations contained in paragraph 5 of the complaint, respondent alleges as follows: Under date of June 12, 1941 respondent and International Association of Machinists, Aircraft Lodge No. 1125, A.F.L. (sometimes referred to herein as the "Union"), made and entered into a certain binding agreement in writing with respect to rates of pay, wages, hours, and other conditions of employment, the purpose of which was and is to promote continuity of work by friendly relations between respondent and the Union. Said agreement now is and ever since the 12th day of June, 1941 has been legally binding and in full force and effect. Paragraph 11 thereof provides:

"The Union and the Company (respondent) agree that the regulations set forth in the Company's Rule Book, attached to and made a part of the agreement, are necessary for the effi-

cient operation of the Company's plant, and that infraction of any rule constitutes cause for discharge or disciplinary action".

Rule 2(b) set forth in said Rule Book provides:

"No employee is permitted to leave his department during working hours without the authority of his foreman".

Said Rule 2(b) now is and at all times material hereto was in full force and effect and constitutes a part of said written agreement between respondent and the Union. Said employee Fisher was discharged and respondent has ever since refused to reinstate him because said employee on numerous occasions during his employment with respondent openly and defiantly disregarded said Rule 2(b), was guilty of insubordination in refusing to ask his foreman for permission to leave his department and from time to time secured permission to leave his department by making false representations to his superiors.

5. With respect to the allegations contained in paragraph 6 of the complaint, respondent admits that while engaged at its San Diego plant as set forth in paragraphs 1 and 2 of the complaint, respondent did, on or about April 14, 1942, discharge Oliver H. Williamson, an employee of respondent, and that on or before May 1, 1942 respondent cancelled the record of discharge, changed the disciplinary action to a "lay-off" for two weeks without pay and reinstated said employee, without loss of seniority, or other status. Respondent denies each

and every other allegation contained in said paragraph 6.

6. Further answering paragraph 6 of the complaint, respondent alleges as follows: Said employee Williamson was justifiably disciplined as aforesaid for making an unwarranted disturbance at the place of his work, which caused serious confusion and disruption of work and production. On or about the 15th day of April, 1942 respondent received a written grievance or complaint from the Union with respect to the action taken by respondent with respect to said employee, Williamson, and thereafter, before the proper officials of respondent were afforded a reasonable opportunity to investigate and act upon the same, respondent was advised by the Board that the charge heretofore filed herein by the Union had been amended by the Union to include the action taken by respondent with respect to said employee. Thereafter on April 29, 1942, the matter involving such action was amicably settled to the complete satisfaction of said employee, the Union and respondent, under the terms of which settlement said employee was restored to duty on or about the first day of May, 1942, without loss of seniority, without change in rate of pay and without loss of his status as a Union Committeeman. Respondent is informed and believes, and therefore alleges, that on or about the 30th day of April, 1942, the Union sent a written notice to the Board withdrawing the charges theretofore filed by the Union in connection with the action taken by respondent with respect to said employee. Respondent alleges that by reason of the

foregoing all questions raised by the complaint concerning said employee have become moot and that the Board is without jurisdiction to determine the same or take any action with respect thereto.

7. Further answering paragraph 6 of the complaint respondent alleges as follows: Paragraph 9 of the agreement between the Union and respondent, described in paragraph 4 hereof, provides:

“9. Complaints and Grievances: The Company desires that unfairness to its employees shall not exist, and that complaints shall be settled whenever possible with its foremen in the shop or department where the complaint or grievance originates.

“Whenever a complaint or grievance develops in any shop or department of the Company the following steps shall be taken:

(1) The complainant shall first discuss his case with his foreman in charge in an effort to arrive amicably at a mutually satisfactory settlement. In case this effort fails:

(2) The complainant shall contact his shop chairman or shop committeeman; and they in turn shall together contact the foreman in a further effort to settle the issues involved. In all cases where this effort fails to bring mutual agreement:

(3) The employee and his committeeman or chairman shall immediately reduce to writing on a grievance form the complaint or grievance.

This grievance form is to be filled out in quadruplicate; one copy to remain with the foreman of the department where the complainant is employed; one copy to be retained by the shop committeeman

or chairman; one copy to be forwarded to the general offices of the Union where it will be turned over to the Business Representative charged with the responsibility of servicing the department or shop of the employee involved; and the fourth copy shall be forwarded by the foreman to the Labor Relations Department.

Within twenty-four (24) hours after this grievance form has been filed with the foreman, the shop committeeman or chairman and the employee involved shall meet with the Labor Relations Director or his authorized representative. If the parties above find themselves unable to agree on a settlement within forty-eight (48) hours after the case was referred to them:

(4) Then and in that event the case shall be referred to the Labor Relations Committee of the Company, and the Union Committee composed of the Business Representative and the shop committeeman or chairman of the shop or department involved. These two committees shall meet; and within five days after the case was referred to them, hand down their final decision on the grievance before them. If these two committees are unable to agree:

(5) The case shall be referred to arbitration as provided for in Article 23 of this agreement."

Respondent alleges that the procedure set forth in paragraph 9 of said agreement was not followed in the case of the grievance presented in connection with said employee Williamson; that the Union and said employee failed to pursue and exhaust the

remedies provided thereunder and that the charges filed by the Union with the Board in connection with the action taken by respondent with respect to said employee was premature and affords no basis or ground for the issuance by the Board of a complaint against respondent in respect of said employee.

Wherefore, respondent requests that the complaint herein be dismissed.

CONSOLIDATED AIRCRAFT
CORPORATION

By W. FRANK PERSONS

Director, Industrial Relations
Dept.

State of California

County of San Diego—ss.

W. Frank Persons, being first duly sworn, deposes and says that he is Director of the Industrial Relations Department of Consolidated Aircraft Corporation; that he makes this affidavit on its behalf, being authorized so to do; that he has read the foregoing answer and knows the contents thereof and that the same are true.

W. FRANK PERSONS

Subscribed and sworn to before me this 31 day of July, 1942.

[Seal]

BETTINA BENTON SMITH

My Commission Expires Oct. 24, 1945.

Power of Attorney

Know All Men by These Presents, that the un-

dersigned, Consolidated Aircraft Corporation, has made, constituted and appointed, and by these presents does make, constitute and appoint W. Frank Persons its true and lawful attorney for it and in its name, place and stead to make, execute and file an answer to a complaint filed against the undersigned in a certain proceeding pending before The National Labor Relations Board, Twenty-first Region (Case No. XXI-C-1988), entitled "In the Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, A.F.L.", and further to make, execute and file any and all pleadings, documents and papers necessary or proper in connection with the undersigned's defense in said proceedings, and generally to do and execute all such other matters, acts and things as may be necessary or proper in connection with such defense.

In Witness Whereof, Consolidated Aircraft Corporation has caused its corporate name to be hereunto subscribed this 31st day of July, 1942 by its Executive Vice-President and General Manager, and its duly attested corporate seal to be hereunto affixed by its Secretary.

CONSOLIDATED AIRCRAFT
CORPORATION

By I. M. LADDON

Executive Vice-Pres. & Gen-
eral Manager

Attest:

[Seal]

R. A. STANBERRY
Secretary.

BOARD'S EXHIBIT No. 1-H

United States of America
National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Designating Trial Examiner In the Matter of: Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, A.F.L. Case No. XXI-C-1988.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 4th day of August A. D. 1942, at Washington, D. C.

[Seal]

BEATRICE M. STERN
Executive Secretary.

(Copy)

[Title of Board and Cause.]

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 21st Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Josef L. Hektoen act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted

to trial examiners under the Rules and Regulations—Series 2 as amended of the National Labor Relations Board.

Dated, Washington, D. C., August 4, 1942.

[Seal]

FRANK BLOOM

Acting Chief Trial Examiner

BOARD'S EXHIBIT No. 1-I

[Title of Board and Cause.]

ORDER FOR BILL OF PARTICULARS

Upon motion of the respondent for a bill of particulars of the complaint heretofore filed herein,

It Is Hereby Ordered that counsel for the Board furnish to the respondent, on or before August 12, 1942, a bill of particulars, setting forth:

1. The names of the officers, agents, and servants of the respondent by whom it is alleged in Paragraphs 4 and 10 of the complaint to have committed certain unfair labor practices.

2. The approximate dates upon which the respondent is alleged in Paragraph 4 of the complaint to have committed certain unfair labor practices.

In all other respects the motion is denied.

[Seal]

JOSEF L. HEKTOEN

Josef L. Hektoen

Trial Examiner

Dated: August 4, 1942.

BOARD'S EXHIBIT No. 1-J

[Title of Board and Cause.]

BILL OF PARTICULARS

Josef L. Hektoen, Trial Examiner, National Labor Relations Board, having issued an Order on August 4, 1942, ordering counsel for the National Labor Relations Board to furnish the Respondent herein a bill of particulars setting forth certain matters,

Comes now Guy Farmer, Attorney, National Labor Relations Board, and for a bill of particulars herein, sets forth the following, expressly reserving, however, his objection and exception to said Order insofar as it requires said bill of particulars and further expressly reserving the right to introduce at the hearing in said matter any and all evidence relevant and material to the issues herein which may be at variance with or in addition to the particular matters set forth herein:

1. In compliance with paragraph 1 of the Order and with respect to paragraph 4 of the Complaint:

The officers, agents, and servants of Respondent alleged to have committed unfair labor practices are A. Vernon, W. M. Shanahan, H. Liegel, S. Powell, E. Stewart, and one Vance of the Respondent's labor relations department.

2. In further compliance with paragraph 1 of the Order and with respect to paragraph 10 of the Complaint:

The officers, agents, and servants of the Respondent alleged in paragraph 10 of the Complaint to

have committed unfair labor practices are D. G. Fleet, Major R. Fleet, I. M. Laddon, J. H. Waterbury, L. D. Larimer, G. J. Newman, H. R. Wiseman, H. Woodhead, Glen Bowers, and W. Frank Persons.

3. In compliance with paragraph 2 of the Order and with respect to paragraph 4 of the Complaint:

Respondent "discriminated against union committeemen" on or about May 1941, June 1941, July 1941, August 1941, September 1941, October 1941, November 1941, December 1941, March 1942, and April 1942;

Respondent "hindered and prevented union committeemen from performing their duties" on or about May 1941, June 1941, July 1941, August 1941, September 1941, October 1941, November 1941, December 1941, and April 1942;

Respondent "induced to resign employees who protested discrimination against union committeemen" on or about April 24, 1942;

Respondent "threatened the discharge of employees and the cancellation of departmental transfers granted employees if grievances were presented on their behalf" on or about April 28, 1942;

Respondent "offered rewards to employees to induce them to give up their union membership and union activities" on or about February 1940, and some time subsequent to December 1940 and prior to June 1, 1941;

Respondent "advised employees that the union would not bargain for them" on or about May 1942 and June 1942;

Respondent "instructed employees not to remain members of the union" on or about May 1942 and June 1942;

Respondent "advised employees that the union would be of no benefit to them" on or about May 1942 and June 1942.

Dated at Los Angeles, California, this 7th day of August, 1942.

[Seal]

GUY FARMER

Attorney

National Labor Relations
Board

BOARD'S EXHIBIT No. 1-K

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Ida N. Myers, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 7th day of August 1942, I served by postpaid registered mail, bearing Government frank, a copy of Bill of Particulars to the following named persons, addressed to them at the following addresses:

Consolidated Aircraft Corporation
Lindbergh Field
San Diego, California

International Association of Machinists
Aircraft Lodge No. 1125, A.F.L.
1054 Third Avenue
San Diego, California

IDA N. MYERS

Subscribed and sworn to before me this 7th day
of August 1942.

[Seal] LILLIAN D. LYONS

Notary Public in and for the County of Los An-
geles, State of California.

My Commission Expires Nov. 24, 1943.

BOARD'S EXHIBIT No. 1-L

[Printer's Note: Board's Exhibit No. 1-L consists of two registered mail receipts and two return cards. Registered Mail receipt No. 397001, dated Los Angeles, Calif., Aug. 7, 1942. Return Card receipt for Registered Mail No. 397001 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by Am. Mech. Lodge No. 1125, by J. J. Blake. Date of delivery, 8-8, 1942. Registered Mail receipt No. 397000, dated Los Angeles, Calif., Aug. 7, 1942. Return Card receipt for Registered Mail No. 397000 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by Consolidated Aircraft Corp., San Diego, Calif., by M. R. Powdrill. Date of delivery, Aug. 8, 1942.]

BOARD'S EXHIBIT No. 1-M

[Title of Board and Cause.]

ORDER AND NOTICE OF CONTINUANCE

This matter having come before Robert Davies, Acting Regional Director for the Twenty-first Region, National Labor Relations Board, upon motion of Roy M. Brown, representative of International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., requesting a continuance of the hearing in this matter;

And said motion being duly considered and a continuance of the hearing herein appearing to be necessary and proper;

It Is Hereby Ordered that the hearing herein, heretofore scheduled to begin on the 18th day of August, 1942, shall be, and it hereby is, continued to September 1, 1942, on which date the hearing shall be held at 10:30 a.m. at the place stated in the Notice of Hearing heretofore issued herein.

Dated: At Los Angeles, California, this 14th day of August, 1942.

[Seal]

ROBERT DAVIES

Acting Regional Director Twenty-first Region Na-
tional Labor Relations Board U. S. Post Office
and Court House Los Angeles, California

BOARD'S EXHIBIT No. 1-N

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Ida N. Myers, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 14th day of August 1942, I served by postpaid registered mail, bearing Government frank, a copy of Order and Notice of Continuance to the following named persons, addressed to them at the following addresses:

Consolidated Aircraft Corporation

Lindbergh Field

San Diego, California

International Association of Machinists

Aircraft Lodge No. 1125, A.F.L.

1054 Third Avenue

San Diego, California

IDA N. MYERS

Subscribed and sworn to before me this 15th day of August 1942.

[Seal]

LILLIAN D. LYONS

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 24, 1943.

BOARD'S EXHIBIT No. 1-O

[Printer's Note: Board's Exhibit No. 1-O consists of two registered mail receipts and two return cards. Registered Mail receipt No. 397864, dated Los Angeles, Calif., Aug. 14, 1942. Return Card receipt for Registered Mail No. 397864 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by International Assoc. of Machinists, by N. Christian. Date of delivery, Aug. 15, 1942. Registered Mail receipt No. 397863, dated Los Angeles, Calif., Aug. 14, 1942. Return Card receipt for Registered Mail No. 397863 is addressed to National Labor Relations Board, Los Angeles, Calif., and is signed by Consolidated Aircraft Corp., San Diego, Calif., by M. R. Powdrill. Date of delivery, Aug. 15, 1942.]

[Title of Board and Cause.]

Mr. Daniel J. Harrington and
Mr. Charles M. Ryan,
For the Board.

Mr. Royal E. T. Riggs and
Mr. Vern B. Thomas, of San Diego, Calif.,
For the Respondent.

INTERMEDIATE REPORT

Statement of the Case

Upon a second amended charge duly filed on July 17, 1942, by International Association of Ma-

chinists, Aircraft Lodge No. 1125, A.F.L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated July 23, 1942, against Consolidated Aircraft Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) during February 1940, and from May 1941 to the date of the complaint (a) discriminated against union committeemen, (b) hindered and prevented them from performing their duties, (c) induced employees who protested against such actions to resign, (d) threatened to discharge and cancel departmental transfers of employees if grievances were presented on their behalf, (e) offered rewards to employees in order to induce them to abandon their union membership and activities, (f) advised employees that the Union would not bargain for them, (g) instructed employees not to remain members of the Union, and (h) advised them that it would be of no benefit to them; (2) on January 1, 1942, discharged and thereafter refused to rein-

state Arthur J. Fisher because of his union membership and activity; (3) on April 14, 1942, discharged and thereafter refused to reinstate Oliver H. Williamson, except that about May 1, 1942, it reinstated him with prejudice to the rights and privileges to which he was entitled by virtue of the Act, because of his union membership and activity; (4) on or about June 12, 1941, and at all times thereafter to the date of the complaint, refused to bargain collectively with the Union, which was at all such times the exclusive representative of the employees of the respondent within an appropriate unit; and (5) by such acts interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

The respondent filed its answer dated July 31, 1942, admitting the allegations of the complaint with respect to its business, denying the commission of any unfair labor practices, and alleging certain affirmative defenses hereinafter more fully discussed. On August 4, 1942, the undersigned entered an order upon the respondent's written motion for a bill of particulars of the complaint, directing counsel for the Board to furnish certain particulars to the respondent. Pursuant to such order, counsel for the Board thereafter furnished to the respondent a written bill of particulars dated August 7, 1942.

Pursuant to notice, a hearing was held at San Diego, California, from September 1 through 8, 1942, before the undersigned, Josef L. Hektoen,

the Trial Examiner duly designated by the Acting Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. At the close of the Board's case, counsel for the respondent moved to dismiss the complaint, and each of its allegations of unfair labor practices, for failure of proof. The motions were denied by the undersigned. At the close of the hearing counsel for the respondent renewed said motions, rulings thereon were reserved by the undersigned, and they are hereby denied; the motion of counsel for the Board to conform the complaint to the proof in respect to formal matters was allowed by the undersigned; and the parties argued orally on the record before him. Counsel for the respondent thereafter filed a brief with the undersigned.

Upon the record thus made, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent, Consolidated Aircraft Corporation, San Diego, California, is a Delaware corporation maintaining its main office and plant at San Diego, California. It is engaged in the design, manufacture, development, and sale of aircraft, air-

craft parts, and accessories. During the fiscal year ending November 30, 1941, it purchased materials, supplies, and equipment having a value in excess of \$5,000,000, more than 50 percent thereof being purchased and transported from outside the State of California. During the same period it sold finished products having a value of \$95,000,000 substantially all of which were delivered outside the State of California, except that its sales during the fiscal year ending December 31, 1941, made to the United States Army and Navy were made f.o.b. factory, San Diego, California.

The respondent admits that it is engaged in commerce within the meaning of the Act.

II. The organization involved

International Association of Machinists, Aircraft Lodge No. 1125, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

III. The unfair labor practices

A. The refusal to bargain

1. The appropriate unit

On April 30, 1937, the Board found¹ a unit consisting of all hourly paid employees and salaried inspectors employed at the respondent's San Diego, California plant, excluding supervisory inspectors and confidential clerks, to constitute an appropriate

(1) Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, 2 N.L.R.B. 772; see also 7 N.L.R.B. 1061 and 8 N.L.R.B. 205.

unit for the purposes of collective bargaining. The complaint alleged and the parties agreed that it continued to be appropriate at the time of the hearing.

The undersigned finds that all hourly paid employees and salaried inspectors employed at the respondent's San Diego, California plant, excluding supervisory inspectors and confidential clerks, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of the majority of the employees within the appropriate unit

On April 30, 1937, the Board certified² the Union as the exclusive representative of the employees in the appropriate unit for the purpose of collective bargaining. The parties agreed that the Union continued to be such exclusive representative at the time of the hearing.

The undersigned finds that on and at all times after June 12, 1941, the Union was the duly designated representative of the majority of the employees in the aforesaid appropriate unit and that,

(2) 2 N.L.R.B. 772; see also 7 N.L.R.B. 1061 and 8 N.L.R.B. 205.

by virtue of Section 9 (a) of the Act, the Union was at all times material herein, and is, the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusals to bargain

(a) The contract

On June 12, 1941, the respondent and the Union entered into a written agreement³ by which the Union was recognized by the respondent as the exclusive representative of the employees in the appropriate unit. Among other things, the contract further established minimum rates of pay and hours of employment, set up a wage review board consisting of three union and three respondent representatives to review wages of employees in April and October of each year, and provided for "interim individual increases when justified, after consulting the foreman and the Union committeemen of the department involved," and set up a grievance procedure. On October 18, 1941, the contract was amended to provide for a 13 cent per hour increase in pay retroactive to August 9, 1941, for all employees who were, on October 11, 1941, receiving more than 65 cents per hour, and on March 5, 1942, it was amended to provide for continuing wage reviews by departmental committees of all

(3) The agreement, executed at a later date, was retroactive to June 12, 1941. It replaced a prior agreement between the parties, dated April 15, 1940.

employees who had completed six months' continuous employment with the respondent, a "General Wage Committee" consisting of three representatives of the Union and three of the respondent to review deadlocked cases, and arbitration in the event of disagreement by the general committee.⁴

(b) The interim individual wage increases

The contract provided for "interim individual increases" in pay for employees to be approved by the respondent "after consulting the foreman and the union committeeman of the department concerned."⁵ On November 11, 1941, without consulting the Union, Works Manager I. M. Laddon informed "All Department Heads" of the respondent that no further interim increases were to be granted until April 1942. The Union protested the respondent's action in suspending the provisions of the contract respecting such increases and on January 22, 1942, after conferences between representatives of the Union and the respondent, Laddon⁶ informed the department heads of the latter that the practice of granting interim increases was

(4) The agreement was also amended in respect to the grievance procedure.

(5) At this time the contract provided for wage reviews in April and October only. As noted above, the wage reviews became continuous by the March 5, 1942, amendment.

(6) He became vice president and general manager of the respondent about January 1, 1942.

to be resumed. The Union declared itself satisfied with this action.

During January, February, and March 1942, however, the respondent without consulting "the Union committeeman of the department concerned," put a number of increases into effect in the purchasing department. The Union protested to Herman R. Wiseman, then the respondent's labor relations director. Wiseman promised to instruct the foreman of the department to consult the union committeeman before "actually granting the increase." Immediately thereafter the respondent, again without consulting the union committeeman, granted some 375 interim increases in the inspection department. The Union again protested. The respondent's management admitted that the increases had been improperly promulgated and on April 11, 1942, C. T. Leigh, vice president and assistant general manager, instructed the department heads of the respondent in detail respecting interim changes in wages. His instructions have since been followed and Roy M. Brown, union Grand Lodge representative, stated at the hearing that the matter had reached "a satisfactory solution to handle all of those particular cases and also the cases in the future, but only after the damage had been done . . ."

(c) The petitions and the notice of
December 13, 1941

On the night of December 10, 1941,⁷ San Diego suffered a blackout necessitating the cessation of work in the respondent's plant. The night shift lost much time as a consequence. On December 11 petitions, the source of which is not disclosed by the record, were circulated among the employees. Those signing them volunteered their time to paint the plant "during daylight hours" so that operations might continue during future blackouts. On December 13 the respondent without consulting the Union circulated petitions among the employees reading: "In view of the present war situation we, the undersigned, offer to work this Sunday at time and a half."⁸ On the same day, without consulting the Union, the respondent posted the following notice, signed by Laddon, works manager:

NOTICE TO ALL EMPLOYEES

In line with President Roosevelt's desire for a 7 day week, those employees who volunteered to work Sunday without pay may do so. Those men are not to ring their time cards. Other employees who signify in writing that they

(7) The evidence indicates, and the undersigned finds, that the plant was operating 6 days a week at this time and that it continued to do so throughout the remainder of the period herein under consideration.

(8) The contract provided for double time on "the seventh consecutive day."

desire to work Sunday at time and one half will ring their time cards and be paid accordingly. The above applies to certain jobs in Jigs and Fixtures, Tool Room, Machine Shop, Fuselage, Paint Shop, Sheet Metal, Metal Bench, Welding, and black out painting. No other departments will work.

Upon being informed of these actions by the respondent, the Union, after unsuccessfully protesting them to Laddon and R. H. Fleet, then president of the respondent, and after a special meeting, permitted its members who desired to do so to work on Sunday, December 14, on condition that they "punch their time clocks." It is conceded by the Union that those who worked on December 14 subsequently received double time pay in accordance with the terms of the contract after conferences between representatives of the respondent and the Union.

(d) The crane-operators

In a wage review conducted during April or May 1941 a "basic hourly rate of 75 cents per hour" for crane-operators was established. General increases of 5 cents per hour during May 1941 and of 13 cents to employees who on October 11, 1941, were receiving more than 65 cents per hour, were thereafter granted by the respondent. During February 1942 committees representing the Union and the respondent met respecting the pay of crane-operators. The Union contended that

crane-operators were to be paid 93 cents per hour⁹ and that the respondent was not following the agreement in the case of newly-hired crane-operators or those transferred to the "parts plant" of the respondent.¹⁰ The respondent stated that crane-operators were not subject to "any base rate of pay." In the course of the negotiations respecting the matter, the Union, by L. A. Perry, representative, on February 21, 1942, wrote Wiseman asking that the respondent immediately name two arbitrators to the end that the matter might be arbitrated pursuant to the terms of the contract. No reply was received by the Union, and in reply to Perry's telephoned inquiry of February 24 Wiseman informed him "that the company had nothing to arbitrate" and that the respondent considered the matter "irrelevant" and would not go further in respect to it.¹¹ The grievance of the Union was subsequently settled by action of the wage review board through its consideration of the crane-operators individually.

(e) The third shift

During the first part of March 1942 and after conferences between it and the Union which began

(9) Seventy-five cents plus the increases of 5 and 13 cents.

(10) It began full operation about June 1941 under George J. Newman, plant manager.

(11) The findings with respect to Wiseman's statements are based upon the uncontradicted and credible testimony of Perry. Wiseman did not testify.

in January, the respondent instituted a third, or midnight to 7 a.m., shift. The contract provided for a differential of 8 cents per hour for night work, and the parties agreed that the third shift additionally receive 8 hours' pay for 6½ hours' work. The contract also provided for a 40-hour week of 5 consecutive 8-hour days, Monday through Friday, with work after 8 hours on any shift to be paid for at time and one-half to 3 hours and thereafter and after 8 hours on Saturday (at time and one-half) at double time, while, as related above, "work on the seventh consecutive day shall be paid for at double time."

On March 9, 1942, just prior to the institution of the third shift, the respondent without notice to the Union issued an order changing working hours of the employees effective March 14, the third shift to begin work at midnight Monday. The effect of the order was to cause the third shift to work from midnight Saturday to 7 a.m. Sunday at time and one-half since that shift would be the sixth, rather than the seventh consecutive day. On March 12 the Union, by James E. Bruce, its coordinator of business agents, wrote Wiseman,¹² stating that under the terms of the contract the Union expected any Sunday work of the third shift to be paid for at double time. On March 14 Wiseman replied that the respondent was "unable to read this interpretation into the Agreement," and

(12) The letter was dictated by Brown, the Union's Grand Lodge representative.

that the third shift would not be compensated at double time for its Sunday work. Despite the Union's continuing protests against it, the respondent had not deviated from this position at the time of the hearing.

(f) The employees hired outside California

During January and February 1942 the respondent hired a number of employees from outside California at wages and for positions mutually agreed upon. After their arrival at the plant, the respondent without notice to the Union decreased the agreed wages or changed the agreed positions, of some 21 or 22 such employees. They filed grievances with the Union. The latter presented the grievances to Wiseman, stating that the respondent should have consulted the Union as the representative of the affected employees before decreasing their rates of pay or changing their jobs. Wiseman refused to act upon the grievances, stating that the employees had misrepresented their capabilities and that the respondent was paying them what they were worth. After meetings between representatives of the parties, assisted by Harry Malcolm of the Conciliation Service of the United States Department of Labor,¹³ the respondent agreed to make retroactive payments to many of the employees involved and furnish the cost of

(13) Malcolm was in San Diego for many weeks during the early part of 1942, and took part in many of the negotiations between the respondent and the Union which are herein discussed.

transportation to their homes to others. On April 21 the Union wrote the respondent that the employees affected approved of its proposed settlement; the payments were thereafter made and the matter was amicably disposed of.

(g) The job classifications

Early in 1942 the respondent unilaterally adopted a schedule of job classifications covering the employees represented by the Union. This resulted in an unnegotiated ceiling on wages. During February the Union protested that job classifications were properly the subject of collective bargaining. The respondent by Wiseman told the Union that it would not negotiate with the Union respecting classifications "at that time." On March 25 the Union wrote the respondent requesting that bargaining conferences respecting the classifications be held. The respondent did not reply. On May 1 the Union in writing reiterated its request.¹⁴ At the time of the hearing the Union had received no reply from the respondent. The Union's repeated requests for a copy of the respondent's job classification schedule remained similarly uncomplished with.

(h) Conclusions

From the facts found above it is clear that the respondent, beginning with its suspension of the

(14) This request was addressed to W. Frank Persons, "industrial relations director" of the respondent. Persons succeeded Wiseman on April 9, 1942.

terms of the contract with respect to interim wage increases on November 11, 1941, sought to impose upon the Union a series of independently arrived at and arbitrarily promulgated conditions affecting matters which were properly the subject of collective bargaining with the Union under the provisions of the Act. It succeeded in doing so in respect to the Sunday pay of the third shift and the job classifications.

The suspension of interim wage increases was not only a breach of its contract with the Union, but because it was made without notice to or consultation with the Union, a clear breach by the respondent of its duty to bargain collectively. After the condition was remedied on January 20, 1942, the respondent persisted in its efforts to discredit the Union in the eyes of the employees by granting hundreds of interim increases in wages without consultation with it. In the absence of any evidence by way of mitigation of its actions in so doing, the respondent must again be found to have violated the terms of both the contract and the Act.

The respondent took advantage of the confusion attendant upon the events of December 7, 1941, to obtain the promise of employees to work Sunday, December 14, at less pay than that provided for by the contract. It contended at the hearing that it was motivated in doing so by the petitions of December 11 by which certain employees volunteered to assist in black out painting. It is obvious, however, that the respondent's solicitation of work at a reduced rate of pay for Sunday, went much

farther than mere acceptance of the aid volunteered by the December 11 petitions. It again dealt directly with its employees rather than with their exclusive representative and again failed to perform the duty imposed upon it by the Act.

By refusing to negotiate with the Union respecting the wages of the crane-operators and brushing aside as "irrelevant" its request for arbitration, and by unilaterally imposing changes in pay and position on the employees hired outside California, the respondent was likewise clearly derelict in its duty to bargain with the Union.

The respondent while tacitly admitting that it was at fault in these matters, contended at the hearing that because they were subsequently adjusted upon protest by and in consultation with the Union, it thus fulfilled its duty to bargain collectively under the Act. This contention is without merit. The Act contemplates an amicable and mutually efficacious bargaining relationship between employer and employee. When an employer repeatedly makes unilateral decisions respecting matters as to which he is under a duty to consult with the representative of his employees, he cannot be found to have bargained collectively even though he later makes amends. It is his initial duty to take the representative of his employees into his confidence and in an atmosphere of frankness and full disclosure, make a genuine effort to find a mutually satisfactory solution of the problem at hand. This the respondent failed to do.

In the matter of the Sunday pay of the third shift the respondent, while mutually in agreement with the Union respecting the institution of a third shift, unilaterally adopted a change in working hours which resulted in the third shift's working on Sunday morning at time and one-half. The respondent did not heed the Union's protest and, so far as is disclosed by the record, did not, as it was bound to do, discuss with the Union the interpretation of the contract respecting the point in issue.¹⁵

The respondent contended at the hearing that as to its undisclosed and arbitrary job classification scheduled it was (1) used by it merely as a "guide," (2) the respondent was prevented from negotiating with the Union respecting it because the matter of stabilized wages for employees of Southern California Aircraft Manufacturers was in the hands of the Federal Government, and (3) that the contract provided for the individual consideration of the wages of each of its scores of thousands of employees and that differences between the Union and the respondent arising from classifications made by the latter could be resolved on that basis.¹⁶ As found above, the classification schedule resulted in a ceiling on wages. Assuming, without so finding, that as contended by the respondent, the Federal Government's wage stabilization program pre-

(15) See *Rapid Roller Co. v. N.L.R.B.*, 126 F. (2d) 452, (C.C.A. 7).

(16) Manifestly, almost insuperable mechanical difficulties and the limitations of time combine to make such a solution impracticable, and the undersigned so finds.

vented the respondent from contracting with the Union respecting classifications, it was nevertheless incumbent upon it to discuss them with the Union and reveal the basis and substance of its "guide." In so vital a matter the respondent again clearly demonstrated its unwillingness to bargain collectively, as well as its complete misconception as to its duty to treat with the Union on the basis contemplated by the Act.¹⁷

The undersigned, upon the entire record, finds that the respondent on November 11, 1941, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

B. The discrimination against Fisher

Arthur J. Fisher began work for the respondent in December 1939 as a punch-press operator in the sheet metal department at 75 cents per hour. He joined the Union early in 1940 and was active in organizing his department. He testified without contradiction, and the undersigned finds, that shortly after his initiation into the Union, Foreman

(17) David G. Fleet, assistant to the manager of the respondent until August 1, 1942, testified that to his knowledge two California aircraft firms, Lockheed and Vega, discussed their job classifications with the unions representing their employees, but was not sure whether "they actually negotiated all the classifications."

Henry J. Liegal told him that if it were not for his union activities, he might become a leadman. In June 1940 Fisher was transferred to a different job in the same department, under Leadman Walter Borg, at a 3-cent hourly increase in pay. In July 1940 the respondent, by R. H. Fleet, president, wrote the Union asking that the employees work 40 hours before receiving overtime pay.¹⁸ At a union meeting held on July 10 Borg, then a union committeeman, moved the adoption of a resolution in conformity with Fleet's request.¹⁹ Fisher opposed the motion and it failed of adoption. On July 26 Liegal discharged Fisher as incompetent. The evidence fails to sustain the respondent's reason for discharging him, but since the complaint does not allege that the respondent discriminated against Fisher by the discharge, the undersigned makes no finding of unfair labor practices based thereon.

Fisher was rehired by the respondent on August 14, 1940, pursuant to action by the Union. He began work in the wing department under Superintendent John B. Waskey and later worked under Leadman Robert B. Mohr. He became union committeeman of the department on January 1, 1941, and on February 1 received a 5-cent hourly increase

(18) The contract then in effect between the Union and the respondent provided for overtime pay after 8 hours' work on any day.

(19) Borg testified that he could not recall the incident. The undersigned, on the basis of Fisher's credible testimony and on the entire record, finds that the events transpired as related by him.

in pay. About June 1941 the respondent opened the "parts plant," about half a mile from the "home" plant. Fisher was transferred to the parts plant at about that time and worked under Leadman William T. Larson making stabilizer spars at an increase of 5 cents per hour.²⁰ At the same time he became chairman of the union committeemen of the parts plant which at that time employed about 15,000 persons. He remained in this position until he was discharged on January 1, 1942, for allegedly disobeying the rules of the respondent by leaving his department without permission. By consequence of the retroactive October 1941 general increase of 13 cents per hour, he was then earning \$1.06 per hour.

Late in December 1940 or early in January 1941 Fisher spoke to Stephan J. Powell, foreman of the wing department, in respect to leaving his department on union business in his capacity as committeeman. Fisher testified that Powell instructed him to inform him [Powell] when he left, and that if he were absent, to so inform his clerk or clerks. Powell testified that he told Fisher the latter must obtain his oral "permission" to leave but that when Fisher told him that he had the word of Plant Manager James L. Kelly that he might do so with Powell's "permission," Powell grudgingly said, "Apparently you have the permission," adding that Fisher "still had to let me know when leaving the

(20) Fisher had also received a 5-cent increase pursuant to the May 1941 general increase.

department.” Powell did not consult Kelly about the matter.²¹ It is thus clear, and the undersigned finds, that in the “home” plant “permission” to leave, insofar as Fisher was concerned, was tantamount to merely notifying the foreman of his doing so.

Fisher testified and Powell denied that during January 1941 the latter told Fisher that if he gave up his union activities, Powell would arrange to have him advanced to a better position. Powell was an unimpressive witness who gave contradictory testimony on many issues. The undersigned finds that he made the remarks attributed to him by Fisher.

When the parts plant opened, Powell became assistant factory manager under Newman.²² On July 23, 1941, the latter issued a notice to the employees stating that with irrelevant exceptions, “no one is permitted to leave their department without the permission of the Foreman in charge,” and that unauthorized departure would be cause for dismissal. On August 26 Newman issued a notice that “Bright red buttons are being issued to the foremen, who will see each man leaving the department is supplied with one, who will return same when mission is completed.”

(21) Kelly testified that he gave no specific instructions to Fisher respecting leaving his department and that it was “understood” by the union committeemen that “permission” of their foreman or his assistants was required in order to leave.

(22) Kelly had no jurisdiction over it during the period under consideration.

Fisher testified that he followed the agreement established between Powell and himself respecting his activities for the Union, that no complaint regarding his leaving his job in connection therewith²³ was made until December 13, 1941, and that both Newman and Powell told him that the notices did not apply to him as chairman of the union committeemen. Newman could not recall "any direct conversation regarding [Fisher] leaving his department" and denied telling him that the notices did not apply to him. Powell first testified that he told Fisher that the notice of August 26 specifically applied to him, but thereafter admitted that he could not recall having ever specifically spoken to Fisher about the matter. The evidence shows that at least two union committeemen in the parts plant, Dennis B. Harkins and Hervey H. Thomas, left their departments on union business, the former "sometimes twice a day," under arrangements with their foremen whose "permission" to do so they obtained by procuring rover's badges from their clerks. From the record as a whole, including Newman's vague and Powell's contradictory and unconvincing testimony regarding the point, the undersigned is convinced and finds that the notices did not specifically apply to Fisher and that Newman and Powell tacitly indicated to him that notifying his foreman or his clerks constituted "permission" to leave his department on union business.

(23) Fisher obtained "rover's" buttons by notice to Foreman Lawrence E. Mineah, or of his clerks, on a number of occasions.

Shortly before the 3:30 p.m. quitting time on December 13, 1941, Fisher got notice of the respondent's petition regarding Sunday work through employee T. L. McMahon. He immediately telephoned Newman, told the latter he would call at his office on his way from work that afternoon, and left the building²⁴ in order to speak to Theodore Stark, McMahon's foreman, before Stark left for the day. He told Stark that circulation of the petition by the respondent was violative of both the Act and the contract and continued on to Newman's office.²⁵ Stark immediately informed Newman of Fisher's visit and when the latter arrived, Newman, according to Fisher, "wheeled around in his chair" and asked, "What the hell are you? A slant eyed Jap lover, a Hitlerite or a God damned Communist?" After Fisher remonstrated with him respecting the petition, Newman added, "Fisher, you know you are treading on thin ice * * * The first of the year you are all done." Newman testified that he inquired of Foreman Mineah as to Fisher's whereabouts and was informed by him that he did not know where Fisher was, that he asked Fisher why he was out of his department and that Fisher admitted he had not obtained "permission" to leave.

(24) Fisher testified, and the undersigned finds, that he endeavored to get permission to leave but that he could not find his foreman nor any clerk of the latter. It is to be borne in mind that these events occupied at most 5 or 10 minutes before quitting time.

(25) The quitting whistle blew while Fisher was in Stark's office.

Newman denied having spoken to Fisher as quoted, but stated that he told him that he believed the petition a patriotic move by the employees to "volunteer their time to come in and blackout the plant,"²⁶ and that Fisher should not interfere. He admitted telling Fisher that he was on thin ice, and warned him to stay on the job in the future. Newman also testified that Fisher came to his office frequently and presented "Mostly petty grievances, a lot of them, more or less imaginary, that became very monotonous, after awhile, to keep hearing." It is clear from the record as a whole that Newman was extremely irked by Fisher's activities as shop chairman. Thus, on cross-examination by counsel for the Board, he testified that when Fisher appeared at his office on December 13 Fisher "had no reason to present any kind of a grievance at that time * * * He was on his way home." In all of the circumstances presented by the record, the undersigned concludes and finds that Newman made the statements to Fisher substantially as attributed to him by the latter.

During the fall of 1941 Foreman Mineah saw Fisher leave the office of L. D. Larimer, of the respondent's personnel department, and told him to stay on the job in the future. Fisher protested

(26) Newman here apparently confused the petition of December 11 with that of December 13, 1941. The former volunteered help; the latter, circulated by the respondent, accepted the help and, as related above, solicited work on Sunday at time and one-half. It was the object of Fisher's activities on December 13.

that he had notified Mineah's clerk of his leaving on union business and that he was following his usual practice in so doing. Mineah used strong language, told Fisher he was no longer under Kelly, and that if he left again, he would be discharged. Fisher filed a written grievance in respect to the matter and at a grievance meeting of representatives of the Union and the respondent, Powell assured the union members, including Fisher, that he would talk to Mineah and "put him on the right track." Although witnesses for the respondent testified that Mineah was spoken to merely about swearing at Fisher, the record indicates and the undersigned finds that Fisher was left under the justifiable impression that Mineah was also told not to interfere with Fisher's legitimate activities as union shop chairman.

In November and December 1941 the matter of getting raincoats and boots for certain negro janitors who worked in the open was discussed by representatives of the Union and the respondent. The latter's management informed the union members that coats and boots would be furnished. Newman thereafter decided to the contrary, however, and Fisher, who had attended the meetings, was not informed of his decision. On the morning of January 1, 1942, a stormy day in San Diego, Fisher, according to his testimony, told Supervisor Elmer Gahlbeck²⁷ that he might have to leave his job that morning in regard to the janitors, one of whom had

(27) As supervisor, Gahlbeck ranked immediately under the assistant foremen.

complained to him about their working in the rain without coats and boots. Gahlbeck, according to Fisher, answered, "It is O.K. with me." Gahlbeck testified that he could not definitely recall Fisher's having spoken to him about the janitors. He also testified that he had no authority to permit Fisher to leave the department. Under these circumstances, Gahlbeck's statement is contextually logical. In view of Gahlbeck's dubious memory of the events of January 1 exhibited on the witness stand, the undersigned is persuaded that Fisher's version of the incident represents the facts; he so finds.

About 9 a.m., A. J. Slaughter, union committeeman of the janitors, called for Fisher and suggested that they speak to Larimer about the situation. Fisher obtained a "rover's" button from Donald Pickett, one of Mineah's clerks, telling him that Gahlbeck had given him permission to leave. As they were moving through the plant, they met Newman, Powell, and Henry Golum, Newman's assistant. Newman demanded to see Fisher's button, the latter produced it from his pocket,²⁸ and explained that he was on union business in regard to the raincoat situation. Newman thereupon sent Fisher back to his job, stating that the raincoat matter "had already been settled," and upon obtaining denials from Mineah and Gahlbeck that they had authorized Fisher's departure, told Min-

(28) Fisher testified that Newman snatched the button off his shirt. The weight of the testimony is to the contrary and the undersigned finds that Newman did not do so.

eah to discharge Fisher for disobeying company rules. This was done and he left the plant at 9:30 a. m.

Fisher's "termination of employment" record shows that he was "O. K. for rehire in your department" in the opinion of Mineah.

After Fisher's discharge, representatives of the Union unsuccessfully sought to accomplish his reinstatement in conferences with Larimer, Wiseman, and Newman, the latter heatedly stating that he would not reemploy Fisher under any conditions and completely rejecting the Union's plea that Fisher should not have been discharged for performing the duties of his union office. On March 19, 1942, Perry, union representative, personally delivered a letter to Wiseman asking whether the Union was correct in believing that the respondent would not further consider Fisher's case. Wiseman refused to accept it, stating that he considered the letter "a legal trick."²⁹

(29) The Board contends that the summary rejections of the Union's efforts on behalf of Fisher's reinstatement constituted a refusal to bargain. Under all of the circumstances revealed by the record, the undersigned concludes and finds that the respondent did not thereby refuse to bargain. Fisher's discharge was an accomplished fact and the respondent was not required to recede from its position even though the discharge might subsequently be found to have been discriminatory. The same is true of its refusal to reinstate employee A. B. Mergen, discharged during December 1941, and in regard to whom the record fails to sustain the Board's contention that the respondent refused to bargain collectively with the Union.

Fisher's zealous performance of his union duties early aroused the respondent's resentment. Thus, when Fisher first became a committeeman in the home plant, Leadman Mohr took occasion to advise Fisher not to "go around and agitate these [grievances]" and testified that he believed Fisher's endeavors to secure raises for the employees in his department constituted a breach of discipline and told Fisher, " . . . come to me, or somebody else, before you start upsetting these men, because these men appear to be satisfied." Supervisor Waskey also testified that he warned Fisher to "let the employee with a grievance bring it to him, rather than go out and hunt up the grievances." Fisher continued his activities on behalf of the Union, however, and became shop chairman of the parts plant. There he followed his former practice in leaving his department on union errands and incurred Mineah's reprimand. Mineah was thereafter, so far as Fisher knew, "put on the right track." Newman, true to his threat of 2 weeks previously, discharged Fisher on January 1, 1942, allegedly because he had not secured the written permission of Mineah in obtaining a rover's button from Pickett. Mineah testified that he "reprimanded" Pickett for issuing the badge to Fisher, but the record is silent as to any discipline being imposed upon him by the respondent for his participation in and responsibility for the incident which, in vivid contrast, resulted in Fisher's summary discharge.

The circumstances surrounding Fisher's dismis-

sal became more than suspicious when placed beside the fact that the respondent, through Powell and Liegal had clearly demonstrated its hostility to the Union and through Newman, its animosity to Fisher on account of his persistence in performing the duties of his office in it. Upon the whole record, the undersigned is convinced and finds that the respondent did not in fact discharge Fisher for disobeying orders, but merely used such alleged disobedience in justification thereof, its actual motive for doing so being his union membership and activity and its determination to rid itself of him on account of his obstinate refusal to abdicate the performance of the duties of his office in the parts plant.

In all the circumstances disclosed by the record, the undersigned finds that the respondent discriminated in regard to the hire and tenure of Fisher's employment, thereby discouraging membership in the Union.

C. The discrimination against Williamson

Oliver H. Williamson worked for the respondent as a jig builder from June 20, 1940, to April 18, 1941, when he resigned. He returned to work during September 1941 and worked on the night shift in the parts plant until his discharge on April 14, 1942. He was rehired on the day shift on May 1, 1942, without loss of seniority. He began work at 65 cents an hour and was earning \$1.15 per hour at the time of the hearing.³⁰

Williamson joined the Union in September 1940,

(30) At that time he was on temporary leave of absence on union business.

became night shift shop committeeman of his department on March 1, 1941, and continued as such to the date of his discharge. About 7:30 p.m. on April 14, Walter Brown, an employee in Williamson's department, informed Williamson that Foreman Milton C. Hangen had transferred him to Fred Ewart, leadman, that Brown did not want to work under Ewart, and that Hangen had told him earlier on the same day that he could check out at 11 p.m. Hangen thereafter changed his mind and, without consulting Brown, through James H. Eastin, his assistant, sent a plant policeman to escort Brown out of the plant at about 8:30 p.m. Williamson objected to Brown's being escorted by a policeman since that fact indicated that Brown had been discharged. He unsuccessfully sought to find Hangen, was told by Eastin to stop his activities and go back to work, and talked in a loud voice concerning the way the plant was being operated by the respondent to the 8 to 12 employees who were gathered at the scene. Liegal, then superintendent of the night shift in the parts plant, appeared after some minutes and, according to Williamson, told the latter, "You are one of these damned Union agitators * * * You better be careful or you will know what I am going to do to you." Liegal denied making these remarks, but in view of the subsequent occurrences the undersigned credits Williamson's testimony and finds that the events took place as related by him. Williamson continued to object to the policeman's taking Brown out of the plant. Liegal and he started to the former's office in order

to discuss the question of certain recent discharges of employees by the respondent.³¹ On the way they met Hangen to whom Williamson repeated his strictures against the respondent. Liegal tacitly instructed Hangen to discharge Williamson. Hangen thereupon did so, Williamson's service record reading, "Discharged—Agitator."

On the following day, April 15, a committee of the Union met with members of the respondent's management in respect to the discharge of both Williamson and Brown. The evidence indicates that at the meeting it was determined that Brown had in fact told Hangen that he would resign. Brown's service record was changed from "Discharged—Declined to take orders" to "Quit." After further conferences between the parties, Williamson was reemployed on the day shift on May 1, 1942, without loss of seniority,³² and his employ-

(31) Williamson told Liegal the subject he wished to discuss was not a union matter and took off his badge. The finding is based upon the testimony of Eastin and Williamson.

(32) The complaint alleged that Williamson was reemployed by the respondent "with prejudice * * * to the rights and privileges to which said employee was and is entitled * * *" Williamson's reemployment on the day shift necessarily terminated his office as union committeeman on the night shift. The parties, however, must be considered to have had this consequence in view when the matter was settled. Since it formed part of the settlement agreement, the undersigned does not, under the circumstances presented, make a finding that Williamson was denied any rights and privileges to which he was entitled by the terms of the Act.

ment record was changed to read "Disciplinary Layoff—2 wks. without pay." On April 30, 1942, Roy M. Brown, union representative, wrote the Regional Director of the Board stating that the matter of the charge previously filed by the Union against the respondent respecting Williamson's discharge had "been settled to the satisfaction" of the Union and that it wished it withdrawn.

The evidence shows that Williamson was correct in insisting that the policeman should not take Brown out of the plant, that the latter had voluntarily resigned, and that he was therefore not properly subject to such escort and surveillance. In the confusion surrounding the scene, Williamson became agitated and the contagion spread to Liegal and Hangen. The fact remains, however, that Williamson was discharged for attending to his duties as a union committeeman. Under such circumstances the respondent's action in dismissing him constituted discrimination by it in regard to his hire and tenure of employment. The undersigned so finds; he further finds that the respondent thereby discouraged membership in the Union.

D. Interference, restraint, and coercion

Joseph J. Blake, head timekeeper of the wing hall department under William M. Shanahan, the respondent's treasurer, and H. A. Vernon, his assistant, was chairman of the union committeemen in the home plant during the last half of 1941, with approximately 50 committeemen reporting to him. Representatives of the Union, including Blake, and

of the respondent negotiated certain contract changes in Washington during the summer of 1941. Blake returned to his job during August. Shortly thereafter he was transferred to Vernon's office on "miscellaneous" jobs and prevented from receiving telephone calls, Vernon considering that the calls received by Blake in the course of his union duties interfered with his work of checking the work of about 100 to 125 employees several times a day. Blake was thereafter assigned to 3 days work in a vault sorting cards and about October 1941, took a month setting up records for the Union on leave of absence from the respondent. Upon his return, he was transferred to the parts plant in what is now the audit department, sorting cards under the supervision of an employee earning less than himself, and was again denied the use of the telephone. He was elected financial secretary of the Union and on January 1, 1942, ceased his employment with the respondent.

Blake testified that his union duties did not interfere with his work as timekeeper. However, the testimony of Shanahan, Vernon, and Felton, union representative, indicates that in the job occupied by Blake as timekeeper, he could not successfully attend to both his duties for the Union and for the respondent and that he was therefore by common consent put on temporary work in Vernon's office. After his leave of absence on Union work in October, he was, according to the undenied testimony of

Shanahan, which the undersigned credits,³³ placed in the auditing department at his own request, pending the outcome of a run-off election for the union position which he later achieved. Under these circumstances, and in all the circumstances revealed by the record, his work changes and the respondent's interdiction against Blake's use of the telephone appear to the undersigned to have been a part of the arrangement arrived at. He therefore finds that the Board's contention that the respondent's activities in respect to Blake constituted violation of Section 8 (1) of the Act, must fail.

On April 28 or 29, 1942, Timekeeper Albert L. Condon, temporary union committeeman, interviewed Shanahan with respect to the request of employee L. D. Hardman for an increase in pay based upon his length of service in Shanahan's department. Hardman was to be transferred to the materials department and desired that action be taken on his pay raise before the transfer took effect since he would lose his seniority by it. Shanahan had previously told Hardman that he would have to wait for his semi-annual wage review until he had completed his required length of service and that the department in which it was conducted would depend on where Hardman was employed at that time. Shanahan informed Condon that because the latter was himself leaving the next day, the matter should be taken up by his successor.

(33) Blake returned to the witness stand on rebuttal by the Board after Shanahan had testified.

Condon testified without contradiction and the undersigned finds that Shanahan then warned him that if a grievance were filed in respect to Hardman, the latter's transfer would be cancelled with the result that he would be "terminated"³⁴ and that anyone who tried to do anything about the Hardman case would get into trouble.

The undersigned finds that the evidence respecting the April 1942 transfer of Edward Barnes from Vernon's supervision to another department does not establish interference by the respondent with his activities as union committeeman. Barnes had himself previously requested a transfer and when Vernon's department was reorganized, he obtained it. There is no showing that it was motivated by the fact that he held a union office.

Everett M. Shannon, committeeman for the timekeepers, incurred the displeasure of Shanahan by demanding what the latter considered to be too large increases in pay for union timekeepers during the 1942 spring and summer wage reviews, and thereby causing the majority of such cases on the April to August, inclusive, lists to be taken to the general wage committee. Shannon testified that Shanahan at various times during this period demanded that he approve recommendations for in-

(34) Shanahan explained on the stand that Hardman was an unsatisfactory employee in his department, and that if he could not effectuate a transfer from it to another, he would be discharged. The record indicates that no grievance was filed and that Hardman was subsequently transferred.

creases without consulting the employees involved, urged him to drop his union job, and warned him to stay out of certain departments where his union work normally took him. Shanahan admitted that he told Shannon of his displeasure with the latter's activities in making an alleged "Sham" of the wage review procedure and telling him that he could not deal with him. He denied making any anti-union statements. In all of the circumstances revealed by the record, particularly the extremely rapid growth of the respondent's operations and its attendant strain upon its managerial personnel and specifically Shanahan, and from his observation of the witnesses, the undersigned is persuaded and finds that Shanahan made the statements attributed to him by Shannon. Despite the circumstances under which they were made, their utterance cannot be excused.

On February 9, 1942, employee H. M. Prior wrote the Union that he had been promoted to assistant foreman and requested a withdrawal card. Don D. Wilkerson, union representative, told him that under the constitution such card could be issued only upon his becoming a general foreman, but that he could drop his membership if he so desired.³⁵ On February 20, Wiseman wrote Wilkerson that he knew of Prior's letter and stated that since Prior was not within the classification cov-

(35) This finding is based upon the credible testimony of Wilkerson.

ered by the contract, "it will be appreciated if you will immediately act upon his request."³⁶

On May 20, 1942, C. W. Perelle, vice president in charge of production, sent a confidential memorandum to William Renison, supervisor, attaching a list of salaried employees under the latter's supervision who were "still paying dues to the Union. Obviously this is contrary to our policy." Perelle told Renison to discuss the matter with the employees affected and stated: "If the individual does not desire to discontinue his affiliation with the Union, he certainly cannot be permitted to retain his present position, but must be transferred back to a job commensurate with his ability and attitude concerning membership in the Union."³⁷

On June 2, the Union by K. G. Phillips, representative filed a grievance protesting the respondent's taking certain "hourly paid supervisors who came under the jurisdiction of the Union and placing them on the administrative payroll (a salaried rate of pay)"³⁸ as contrary to the contract and the action of Foreman Edward Stuart of the purchasing department in requesting such employees to write letters to the Union asking that they be removed from its rolls, and requesting the return of

(36) The Union took no action. Prior permitted his dues to become delinquent and was "automatically dropped from the union."

(37) Emphasis supplied.

(38) Phillips testified, and the undersigned finds, that such transfers were made without change in the job status of those involved.

such transferred employees to hourly rates. About a week later, Phillips, met with Thomas E. Vance supervisor in the respondent's labor relations division. Vance told Phillips that the action of Stuart had been taken pursuant to Perelle's memorandum which represented the respondent's policy. The record is silent as to the disposition, if any, of the grievance.

Shanahan's remarks to Condon in connection with the latter's presentation of the Hardman case and to Shannon regarding his activities as union committeeman were clearly coercive of the employee's rights under the Act. The activities of Wiseman and Perelle, highlighted by the latter's instruction that salaried employees who did not withdraw from the Union be transferred back to positions in keeping with their "attitude" toward membership therein, were likewise clear invasions of the employees' rights to membership and activity in a labor organization of their choice.

The undersigned finds that by the acts and statements of Liegal, Powell, and Newman,³⁹ and Shanahan, Wiseman, and Perelle, the respondent has interfered with, coerced, and restrained its employees in the exercise of rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Sec-

(39) In connection with Arthur J. Fisher, *supra*.

tion III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union. It will therefore be recommended that the respondent, upon request, bargain collectively with the Union as the exclusive representative of its employees within the appropriate unit.

It has been found that the respondent has discriminated in regard to the hire and tenure of employment of Arthur J. Fisher and Oliver H. Williamson. It will therefore be recommended that the respondent offer Fisher immediate and full reinstatement to his former or substantially equivalent position and make him whole for any loss of pay he may have suffered as a consequence of the respondent's discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages from the date of the respondent's discrimination against him to the date

of the offer of reinstatement, less his net earnings⁴⁰ during said period.⁴¹

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., is a labor organiza-

(40) By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B. 311 U. S. 7.

(41) The Williamson discharge was "settled" by his being rehired by the respondent without back pay for the two weeks of his "disciplinary lay-off" as the result of conferences between the Union and the respondent. Since the question of back pay was undoubtedly reviewed by the parties, it must be considered to have been waived by the Union as a part of the settlement. The undersigned will not, therefore make the usual recommendation that Williamson be made whole for any loss of pay he may have suffered by reason of the respondent's discrimination against him since it would not, under the circumstances effectuate the policies of the Act.

tion, within the meaning of Section 2 (5) of the Act.

2. All hourly paid employees and salaried inspectors employed at the respondent's San Diego, California, plant, excluding supervisory inspectors and confidential clerks, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., was on June 12, 1941, and at all times material herein is the exclusive representative of all the employees of the respondent in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on November 11, 1941, and at all times thereafter to bargain collectively with International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., as the exclusive representative of its employees, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Arthur J. Fisher and Oliver H. Williamson, thereby discouraging membership in International Brotherhood of Machinists, Aircraft Lodge No. 1125, A.F.L., the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8(3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has en-

gaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices, are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Consolidated Aircraft Corporation, San Diego, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Refusing to bargain collectively with International Association of Machinist, Aircraft Lodge No. 1125, A.F.L., as the exclusive representative of all hourly paid employees and salaried inspectors employed at the respondent's San Diego, California, plant, excluding supervisory inspectors and confidential clerks;

(b) Discriminating in regard to the hire and tenure of employment of its employees because of their membership in or activity on behalf of International Association of Machinists, Aircraft Lodge No. 1125, A.F.L.;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes

of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act;

(a) Upon request, bargain collectively with International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., as the exclusive representative of all hourly paid employees and salaried inspectors employed at the respondent's San Diego, California, plant, excluding supervisory inspectors and confidential clerks;

(b) Offer to Arthur J. Fisher, immediate and full reinstatement to his former or substantially equivalent position;

(c) Make whole said Arthur J. Fisher for any loss of pay he may have suffered as a consequence of the respondent's discrimination against him, in the manner set forth in the Section entitled "The remedy" above, less his net earnings⁴² during said period;

(d) Post immediately and maintain for a period of at least sixty (60) consecutive days from the date of posting, in conspicuous places throughout its San Diego, California, plant, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), and (c) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs 2(a),

(42) See footnote 40, *supra*.

(b), and (c) hereof; and (3) that the respondent's employees are free to become or remain members of International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of the receipt of the Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—effective October 14, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions

or objections) as it relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days after the date of the order transferring the case to the Board.

JOSEF L. HOKTOEN,

Trial Examiner.

Dated: October 16, 1942.

[Title of Board and Cause.]

ORDER TRANSFERRING CASE TO THE
NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington,

It Is Hereby Ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Case No. XXI-C-1988 be, and it hereby is, transferred to and continued before the Board as Case No. C-2378.

Dated, Washington, D. C., October 20, 1942.

By direction of the Board:

[Seal] BEATRICE M. STERN
Executive Secretary

Consolidated Aircraft Corporation
San Diego, California

W-1292
619 Union Trust Bldg.
Washington, D. C.

October 26, 1942

National Labor Relations Board
4th Floor
Shoreham Bldg.
Washington, D. C.

Attention: Mrs. Beatrice M. Stern
Executive Secretary

Gentlemen:

With reference to Case C-2378 transferred by Trial Examiner to National Labor Relations Board on October 20, the Findings and Conclusions were not received here until October 22 and under the 15 days shortened time provided for in Section 33 Respondents Exceptions and Brief must be filed on or before November 4 in Washington. Respondent intends to file Exceptions to the Report and requests opportunity for oral argument thereon before the Board and respectfully requests further that an extension of time be granted to formulate Exceptions and Brief for 15 days from November 4.

This company is engaged entirely in production of airplanes and parts in the prosecution of the war. Its counsel find difficulty in keeping up with the daily routine of the company's legal affairs. On account of time and distance, and in order not to interfere with or delay the company's legal affairs in connection with war production, this extension is requested.

Yours truly,

CONSOLIDATED AIRCRAFT
CORPORATION

H. E. WEIHMILLER

Vice Pres. & East. Repr.

October 28, 1942

Mr. H. E. Weihmiller, Vice President
Eastern Representative
Consolidated Aircraft Corporation
619 Union Trust Building
Washington, D. C.

Re: Consolidated Aircraft Corp.
Case No. C-2378

Dear Sir:

This will acknowledge your letter of October 26, requesting an extension of time for filing Exceptions and Brief on behalf of the respondent.

Please be advised that you are hereby granted until November 12, 1942 for submitting your Exceptions and Brief. This extension is granted all parties to the proceeding.

Your request for oral argument will be granted and all parties will be advised when the proceeding is scheduled for argument.

Very truly yours,

s/ BEATRICE M. STERN

Beatrice M. Stern

Executive Secretary

National Labor Relations

Board 21st Region

Paul Hutchings, Esq.

Machinists Bldg.

Washington, D. C.

JL/ep

cc:

Mr. Roy M. Brown Repr.

Int'l Association of Machinists

Lodge #1125 AFL

1054 3rd St.

San Diego, Calif.

[Title of Board and Cause.]

RESPONDENT'S STATEMENT OF EXCEPTIONS

The respondent, Consolidated Aircraft Corporation, hereby excepts to the intermediate report of Josef L. Hektoen, the trial examiner, dated October 16, 1942, in the following particulars:

Exceptions to Findings of Fact

1. To finding III A 3 (b) upon the ground that the finding is contrary to the evidence, against the

weight of evidence, is unsupported by substantial evidence, and that the facts found therein are immaterial and do not constitute a refusal on the part of the respondent to bargain collectively.

2. To finding III A 3 (c) upon the ground that the finding is contrary to the evidence, against the weight of evidence, is unsupported by substantial evidence, and that the facts found therein are immaterial and do not constitute a refusal on the part of the respondent to bargain collectively.

3. To finding III A 3 (d) upon the ground that the finding is contrary to the evidence, against the weight of evidence, is unsupported by substantial evidence, and that the facts found therein are immaterial and do not constitute a refusal on the part of the respondent to bargain collectively.

4. To finding III A 3 (e) upon the ground that the finding is contrary to the evidence, against the weight of evidence, is unsupported by substantial evidence, and that the facts found therein do not constitute a refusal on the part of the respondent to bargain collectively, but set forth only a difference of opinion as to the interpretation of the agreement between the respondent and the Union, dated June 12, 1941, as amended, which, by the terms of said agreement, shall be settled by arbitration.

5. To finding III A 3 (f) upon the ground that the finding is contrary to the evidence, against the weight of evidence, is unsupported by substantial evidence, and that the facts found therein are immaterial and do not constitute a refusal on the part of the respondent to bargain collectively.

6. To finding III A 3 (g) upon the ground that the finding is contrary to the evidence, against the weight of evidence, is unsupported by substantial evidence, and that the facts found therein do not constitute a refusal on the part of the respondent to bargain collectively but set forth only a difference of opinion as to the interpretation of said agreement between respondent and the Union, which, by the terms of said agreement, shall be settled by arbitration; that the facts found are immaterial; and that the dispute between the respondent and the Union has been certified by the Secretary of Labor to the National War Labor Board, pursuant to Executive Order No. 9017 issued by the President January 12, 1942.

7. To each and every of the conclusions set forth in the section headed III A 3 (h) and to the conclusions drawn from findings (b), (c), (d), (e), (f) and (g) above referred to, in that the findings (b), (c), (d), and (f) show that matters in dispute were settled satisfactorily by collective bargaining; that finding (e) sets forth only a dispute as to the interpretation of said agreement between respondent and the Union; that finding (g) sets forth only a difference of opinion as to the interpretation of said agreement between respondent and the Union; and that this Board is without jurisdiction with reference to the matters set forth in findings III A 3 (e) and III A 3 (g) until and unless arbitration has been requested by the Union and refused; and generally to each and all of the conclusions set forth on the ground that the same are

contrary to the weight of evidence, not supported by substantial evidence, and are contrary to law.

8. To finding III B, entitled "The discrimination against Fisher", upon the ground that the same is contrary to the evidence, contrary to the weight of evidence, not supported by substantial evidence, and that the finding fails to find the complete facts concerning the discharge of Fisher according to undisputed evidence.

9. To finding III C, entitled "The discrimination against Williamson", upon the ground that the same is contrary to the evidence, contrary to the weight of evidence, not supported by substantial evidence and fails to find the complete facts concerning the discharge of Williamson according to undisputed evidence.

10. To each and every paragraph in the finding III D, entitled "Interference, restraint, and coercion", upon the ground that the same are contrary to the evidence, contrary to the weight of evidence, not supported by substantial evidence and are immaterial and unconnected with any act of discrimination or with any act of interference, restraint or coercion, or if regarded as attempted, such interference, restraint, and coercion are shown by undisputed evidence to have been uncompleted and unsuccessful; that the paragraph with reference to timekeeper Albert L. Condon shows no interference, restraint, or coercion with reference to the said Condon as union committeeman; that the finding with reference to said Condon fails to find the complete facts concerning the transfer of Hardman

according to undisputed evidence; that the finding with reference to Shannon fails to set forth any fact of interference or coercion with reference to said Shannon; that the finding fails to find the complete facts concerning the activities of Shannon, which, according to the undisputed evidence, consisted of activities discriminating against non-union men, contrary to the provisions of said agreement between respondent and the Union; that the findings with reference to Prior and the bulletin of Perelle fail to show any act of interference, restraint, or coercion, or if regarded as attempted, the evidence fails to show that said acts resulted in any interference, restraint and coercion of any employees.

11. To finding IV, entitled "The Effect of the Unfair Labor Practices upon Commerce", upon the ground that the same is contrary to the evidence, **contrary to the weight of the evidence**, not supported by substantial evidence, and is contrary to law.

Exceptions to Rulings

1. At pages 447 to 449, inclusive, of the record, to the overruling of the motions of respondent to dismiss the charges and the complaint; at page 722 of the record, to the admission of the Board's Exhibits 8(a) to 8(e), inclusive, upon the ground that the same were not properly proved, and had no more probative force at the time of their admission than when they had been previously rejected by the trial examiner (record p. 97) upon the ground that they constituted no proof that the union committeeman had not been consulted prior to any wage increase

therein referred to, and that they are incompetent and irrelevant as a basis for part of finding III A 3 (b); and to the denial of the respondent's motions to dismiss the complaint and each of its allegations of unfair labor practices, renewed by respondent at the close of the hearing, which denial is contained in the Intermediate Report under the caption "Statement of the Case".

Exceptions to Conclusions of Law and Recommendations

1. To the conclusions of law numbered 4, 5, 6 and 7 under the caption "Conclusions of Law", and to the recommendations numbered 1(a), (b), and (c), and 2(a), (b), (c), (d), and (e) under the caption "Recommendations", upon the ground that the same are not supported by the evidence and are contrary to the evidence and to law; and respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusions and recommendations are based; and that said conclusions and recommendations are improper upon the basis of the facts found.

General Exception

For a general exception respondent alleges that the National Labor Relations Board has no jurisdiction over disputes between respondent and the Union with reference to job classifications, wage rates, and salaries by reason of: Executive Order No. 9017, issued by the President on January 12, 1942; the Act of October 2, 1942, Public Law No. 729, 77th Congress, 2d Session, entitled "An Act

to Amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes"; Executive Order No. 9250, issued by the President on October 3, 1942; the following General Orders of the National War Labor Board: Number 1, issued October 7, 1942, Number 2, issued October 7, 1942, Number 3, issued October 7, 1942, and Number 5, issued October 14, 1942; and the certification of the Secretary of Labor under the authority of Executive Order No. 9017, issued by the President on January 12, 1942, to the National War Labor Board of the dispute involving the Consolidated Aircraft Corporation, San Diego, California, and International Association of Machinists, Lodge No. 1125.

Wherefore, respondent respectfully prays that the complaint against it be dismissed and for such other and further relief as may be just and proper.

Dated at San Diego, California, October 30, 1942.

CONSOLIDATED AIRCRAFT
CORPORATION

By PRUITT, HALE & COURSEN

Attorneys

420 Lexington Ave.

New York City

(Signed) ROYAL E. T. RIGGS

(Signed) HARRIS G. NELSON

Of Counsel

To:

National Labor Relations Board

Washington, D. C.

National Labor Relations Board

21st Region, U. S. Post Office & Courthouse

Los Angeles, California

International Association of Machinists,

Aircraft Lodge No. 1125, A.F.L.

1133 Fourth Avenue

San Diego, California

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449), a hearing will be held before the National Labor Relations Board on Thursday, December 3, 1942, at 10:30 a.m., in Room 326, Shoreham Building, Fifteenth and H Streets, N.W., Washington, D.C., for the purpose

of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket, no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., November 18, 1942.

[Seal]

BEATRICE M. STERN

Executive Secretary

[Title of Board and Cause.]

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place December 3, 1942 at 10:30 a. m.

Before:

Harry A. Millis, Chairman
William M. Leiserson, Member
Gerard D. Reilly, Member

Appearances:

Grace McEldowney, of Counsel to the Board

For the Company:

Royal T. Riggs

c/o Consolidated Aircraft

San Diego, Cal.

For the Union:

Paul Hutchings, I.A.M.

Machinists Bldg.

Washington, D. C.

United States of America

Before the National Labor Relations Board

Case No. C-2378

In the Matter of

CONSOLIDATED AIRCRAFT CORPORATION

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS, AIRCRAFT LODGE**

No. 1125, A.F.L.

Mr. Daniel J. Harrington and

Mr. Charles M. Ryan,
for the Board.

Mr. Royal E. T. Riggs,

Mr. Vern B. Thomas, and

Mr. Harris C. Nelson,
of San Diego, Calif., and
Pruitt, Hale & Coursen,
of New York City,
for the respondent.

Mr. Paul Hutchings,
of Washington, D. C.,
for the Union.

Miss Grace McEldowney,
of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon a second amended charge duly filed on July 17, 1942, by International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated July 23, 1942, against Consolidated Aircraft Corporation, San Diego, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) during February 1940, and from May 1941 to the date of the complaint, (a) discriminated against union committeemen, (b) hindered and prevented them from performing their duties, (c) induced employees who protested against such actions to

resign, (d) threatened to discharge and to cancel departmental transfers of employees if grievances were presented on their behalf, (e) offered rewards to employees in order to induce them to abandon their union membership and activities, (f) advised employees that the Union would not bargain for them, (g) instructed employees not to remain members of the Union, and (h) advised them that it would be of no benefit to them; (2) on January 1, 1942, discharged, and thereafter refused to reinstate Arthur J. Fisher because of his union membership and activity; (3) on April 14, 1942, discharged, and thereafter refused to reinstate Oliver H. Williamson, except that about May 1, 1942, it reinstated him with prejudice to the rights and privileges to which he was entitled, because of his union membership and activity; (4) on or about June 12, 1941, and at all times thereafter, refused to bargain collectively with the Union, which was at all such times the exclusive representative of the employees of the respondent within an appropriate unit; and (5) by such acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter the respondent filed a motion for a bill of particulars, dated July 30, 1942, and an answer, dated July 31, 1942. In its answer, it admitted the allegations of the complaint with respect to its business, denied the commission of any unfair labor practices, and alleged certain affirmative matter by way of defense. On August 4, 1942,

the Trial Examiner issued an order directing counsel for the Board to furnish certain particulars to the respondent. Pursuant to this order, counsel for the Board thereafter furnished to the respondent a written bill of particulars dated August 7, 1942.

Pursuant to notice, a hearing was held at San Diego, California, from September 1 through 8, 1942, before Josef L. Hektoen, the Trial Examiner duly designated by the Acting Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the close of the Board's case, counsel for the respondent moved to dismiss the complaint, and each of its allegations of unfair labor practices, for failure of proof. The motions were denied by the Trial Examiner. At the close of the hearing, he reserved ruling upon a renewal of the same motions, which he thereafter denied in his Intermediate Report. A motion of counsel for the Board to conform the complaint to the proof in respect to formal matters was granted. During the course of the hearing, the Trial Examiner made rulings on other motions and on the admissibility of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. At the close of the hearing, counsel for the Board and the respondent argued orally, on the record, before the

Trial Examiner. A brief was thereafter filed with him by the respondent.

Thereafter, the Trial Examiner filed his Intermediate Report, dated October 16, 1942, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. On November 9, 1942, the respondent filed exceptions to the Intermediate Report, and on November 12, 1942, a brief in support of its exceptions.

Upon request of the respondent and pursuant to notice, a hearing was held before the Board in Washington, D. C., on December 3, 1942, for the purpose of oral argument. The respondent and the Union were represented by counsel and participated in the hearing.

The Board has considered the exceptions and briefs filed by the respondent and, except insofar as the exceptions are directed to the Trial Examiner's conclusions that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) and (5) of the Act, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent, Consolidated Aircraft Corporation, San Diego, California, is a Delaware corporation having its principal office and a plant at San Diego, California, where it is engaged in the design, manufacture, development, and sale of aircraft, aircraft parts, and accessories. During the fiscal year ended November 30, 1941, it purchased materials, supplies, and equipment having a value in excess of \$5,000,000, more than 50 percent thereof being obtained from points outside the State of California. During the same period it sold finished products having a value of \$95,000,000, substantially all of which were delivered to points outside the State of California. Its sales during the fiscal year ended December 31, 1941, to the United States Army and Navy, were made f.o.b. factory, San Diego, California.

The respondent admits that it is engaged in commerce, within the meaning of the Act.

II. The organization involved

International Association of Machinists, Aircraft Lodge No. 1125, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

III. The unfair labor practices

A. The alleged refusal to bargain; the alleged discriminatory discharges

1. The contract

On June 12, 1941, the respondent and the Union

entered into a written agreement¹ in which the respondent recognized the Union as the exclusive collective bargaining representative of all hourly paid employees and salaried inspectors, except supervisory inspectors and confidential clerks;² agreed, in lieu of granting the Union a closed shop, to recommend membership in the Union to its employees; and further agreed not to intimidate or in any way discriminate against any employee because of union activities. The contract also defined the workweek, established minimum rates of pay and hours of employment, set up a joint committee of representatives of the Union and the respondent to review hourly wage rates in each department in April and October of each year, provided for the granting of "interim individual increases" in pay, and established a grievance procedure. In addition, it provided for arbitration "if any of the terms, provisions, or rates

(1) This agreement, which superseded a prior agreement between the parties dated April 15, 1940, was to remain in effect for "two years from its date or for the period of the Unlimited National Emergency proclaimed by the President of the United States on 27 May 1941, whichever is the longer, or until amended by agreement after 15-day notice by either party."

(2) This unit is substantially the unit which we have previously found appropriate for the purposes of collective bargaining. Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, 2 N.L.R.B. 772; Matter of Consolidated Aircraft Corporation and International Union, United Automobile Workers of America, Local No. 506, C.I.O., 7 N.L.R.B. 1061, 8 N.L.R.B. 205.

covered by this agreement are not settled satisfactorily by the parties hereto.”

On October 18, 1941, the contract was amended to provide for a 13-cent per hour increase in pay, retroactive to August 9, 1941, for all employees who were on October 11, 1941, receiving more than 65 cents an hour. On March 5, 1942, it was further amended to provide for continuing wage reviews, by departmental committees, for all employees on completion of 6 months' continuous employment with the respondent, with appeal to a "General Wage Committee," consisting of three representatives of the Union and three of the respondent, in deadlocked cases, and arbitration in the event of disagreement by the general committee. The grievance procedure was also amended in various respects, in particular by the addition of a provision for arbitration in case of disagreement between the committees representing the respondent and the Union. At the time of the hearing the contract, as so amended, was still in effect.

2. The disputes arising after the execution
of the contract

a. The interim individual wage increases

As stated above, the contract provides for "interim individual increases" in pay. Nevertheless, on November 11, 1941, I. M. Laddon, then the respondent's works manager, without consulting the Union, informed all department heads of the respondent that no further interim increases were to be granted until April 1942. The Union protested the respond-

ent's action in thus suspending the provisions of the contract; and on January 22, 1942, after conferences between representatives of the Union and the respondent, Laddon³ informed the department heads that the practice of granting interim increases was to be resumed. The Union declared itself satisfied with this action.

During January, February, and March 1942, however, the respondent put a number of increases into effect in the purchasing department without consulting the union committeeman of the department as required by the contract.⁴ The Union protested to Herman R. Wiseman, then the respondent's labor relations director. Wiseman promised to instruct the foreman of the department to consult the union committeeman before actually granting such increases. Shortly thereafter the respondent, again without consulting the union committeeman of the department concerned, granted some 375 interim increases in the inspection department. The Union again protested. The respondent's management admitted that the increases had been improperly promulgated and offered to withdraw them and renegotiate them with the Union, but the Union did not insist on this action. On April 11, 1942, C. T. Leigh,

(3) About January 1, 1942, Laddon became vice president and general manager of the respondent.

(4) The contract provides that "in accordance with past practice, the Company will approve interim individual increases when justified, after consulting the foreman and the union committeeman of the department concerned."

the respondent's vice president and assistant general manager, gave detailed instructions to the respondent's department heads respecting future interim changes in wages. His instructions have since been followed; and Roy M. Brown, the Union's Grand Lodge representative, stated at the hearing that the parties had reached "a satisfactory solution to handle all of those particular cases and also cases in the future, but only after the damage had been done * * *"

b. The petitions and the notice of December 13, 1941

On the night of December 10, 1941, San Diego had a blackout necessitating the cessation of work in the respondent's plant. The night shift lost much working time in consequence. On December 11 petitions, the source of which is not disclosed in the record, were circulated among the employees. Those signing them volunteered their time to paint the plant "during daylight hours" so that operations might continue during future blackouts. On Saturday, December 13, the respondent, without consulting the Union, circulated petitions among the employees reading, "In view of the present war situation we, the undersigned, offer to work this Sunday at time and a-half."⁵ On the same day, without consulting the Union, the respondent posted the following notice, signed by Works-Manager Laddon:

(5) We find, as did the Trial Examiner, that the plant was then operating 6 days a week, and that it continued to do so throughout the remainder of the period under consideration herein. The contract provided that "work on the seventh consecutive day shall be paid for at double time."

NOTICE TO ALL EMPLOYEES

In line with President Roosevelt's desire for a 7-day week, those employees who volunteered to work Sunday without pay may do so. Those men are not to ring their time cards. Other employees who signify in writing that they desire to work Sunday at time and one-half will ring their time cards and be paid accordingly. The above applies to certain jobs in Jigs and Fixtures, Tool Room, Machine Shop, Fuselage, Paint Shop, Sheet Metal, Welding, and blackout painting. No other departments will work.

Upon being informed of these actions by the respondent, the Union, after unsuccessfully protesting them to Laddon and R. H. Fleet, then president of the respondent, and after a special meeting, permitted its members who desired to work on Sunday, December 14, to do so, on condition that they "punch their time clocks." It is conceded by the Union that subsequently, after conferences between representatives of the respondent and the Union, those who worked on December 14 received double time pay in accordance with the terms of the contract.

c. The crane operators

During February 1942, committees representing the Union and the respondent met and discussed the pay of crane operators. The Union contended that these employees should be paid 93 cents per hour, basing its contention on the fact that a 75-cent hourly rate, established in a wage review in April

or May 1941, had been followed by general increases of 5 cents and 13 cents an hour in May and October, respectively. The 93-cent rate was not being paid to newly hired crane operators or those transferred to the "parts plant," and the respondent took the position that it would not agree on any "base rate of pay" for these operators. In the course of the negotiations L. A. Perry, the union representative, on February 21, 1942, wrote Wiseman asking that the respondent immediately name two arbitrators to consider the matter. No reply was received by the Union, and in reply to Perry's telephoned inquiry of February 24, Wiseman informed him "that the Company had nothing to arbitrate" and that "they considered that the matter was entirely irrelevant and that they were not going to consider it." The matter was subsequently settled, without arbitration, through consideration of the pay rates of the individual crane operators by the wage review board.

d. The employees hired outside California

During January and February 1942, the respondent hired a number of employees outside California at wages and for positions mutually agreed upon by the respondent and the employees in question. After their arrival at the plant, the respondent, without notice to the Union, decreased the wages or changed the positions of some 21 or 22 such employees. The Union, in presenting grievances on their behalf to Wiseman, took the position that the respondent should have consulted the Union as the representative of the affected employees before changing their

jobs or pay. Wiseman refused to act upon the grievances, stating that the employees had misrepresented their capabilities and that the respondent was paying them what they were worth. After meetings between representatives of the parties, assisted by a conciliator from the Conciliation Service of the United States Department of Labor, the respondent agreed to make retroactive payments to many of the employees involved and to furnish the cost of transportation to their homes to others. On April 21, 1942, the Union wrote the respondent that the employees affected had approved the proposed settlement. The payments were thereafter made and the matter was amicably disposed of.

e. The third shift

During the first part of March 1942, after conferences with the Union, the respondent instituted a third shift, to begin work at midnight. It was agreed that employees on this shift would receive the 8-cent differential paid for night work under the contract, and, in addition, would receive 8 hours' pay for 6½ hours' work. No mention was made, during the negotiations, of the days of the week on which this shift would work.

On March 9, 1942, the respondent, without notice to the Union, issued an order establishing the working hours of the three shifts. Under this schedule, to become effective March 14, the third shift was to begin its workweek at midnight on Monday. Since the respondent was then operating on a 6-day week, the effect of the order was to cause this shift to work from midnight Saturday to 7 a.m. Sunday.

On March 12, the Union wrote Wiseman that, under the terms of the contract, the Union expected any Sunday work of the third shift to be paid for at double time.⁶ On March 14, Wiseman replied that the respondent was "unable to read this interpretation into the agreement," and that employees on the third shift would receive the same weekly pay for 39 hours as employees on the second shift for 48 hours. Despite the Union's continuing protests, the respondent has maintained this position.

f. The job classifications

Early in 1942, the respondent unilaterally adopted a schedule of job classifications covering the employees represented by the Union. During February the Union protested that job classifications were properly a subject for collective bargaining. The respondent, by Wiseman, told the Union that it would not negotiate with the Union respecting classifications at that time. On March 25 the Union wrote the respondent, requesting that bargaining conferences be held respecting classifications and rates of

(6) The pertinent sections of the contract are as follows:

4. Hours: The work week shall consist of forty hours of five consecutive days, from Monday thru Friday * * *

5. Overtime Pay: Work after eight hours on any shift shall be considered overtime, payable at time and one-half. After three hours overtime on any one day and eight hours overtime on Saturday (payable at time and one-half), double time shall be paid. With the exception of custodial employees, work on the seventh consecutive day shall be paid for at double time.

pay. The respondent did not reply. On May 1 the Union in writing repeated the request. At the time of the hearing, the Union had received no reply from the respondent, nor had the respondent complied with the Union's requests for a copy of the respondent's job classification schedule. The respondent contends, however, that the job classifications schedule was merely for its own guidance in employing new employees and stabilizing classifications in its plants, that the Union's request for bargaining with respect to classifications and rates was inconsistent with the contract provision for individual wage reviews, and that any grievance with reference to an individual employee could have been taken to arbitration under the contract. It further contends that the fact that the entire matter of wage stabilization, including job classification and wage rates, is now under consideration by the Government, makes it impossible for the respondent to bargain with the Union regarding it.

3. The discharges

a. Arthur J. Fisher

Fisher began work for the respondent in December 1939 as a punch-press operator at 75 cents an hour. He joined the Union early in 1940 and was active in organizing his department. At the hearing he testified without contradiction, and we find, as did the Trial Examiner, that shortly after his initiation into the Union, his foreman, Henry J. Liegal, told him that he might become a leadman if it were not for his union activities. In June 1940 he was transferred to a different job in the

same department at an increase in pay; but on July 26, 1940, shortly after he had opposed a change which the respondent had requested in regard to overtime pay, Liegal discharged him as incompetent.

On August 14, 1940, after action by the Union, Fisher was rehired by the respondent, and started work in the wing department. On January 1, 1941, he became union committeeman of that department. During January, according to his testimony, his foreman, Stephen J. Powell, told him that, if he gave up his union activities, Powell would arrange to have him advanced to a better position.⁷ When the parts plant was opened about June 1941, Fisher was transferred to it, and he there became chairman of the union committeemen, a position which he retained until he was discharged on January 1, 1942, allegedly for disobeying the rules of the respondent by leaving his department without permission. He was then earning \$1.06 an hour.

There is contradictory testimony in the record as to the respondent's rules in requiring permission for an employee to leave his department and as to the application of such rules to Fisher as union committeemen's chairman.⁸ It is clear, however, that

(7) Although Powell denied having made this remark, the Trial Examiner found him an unimpressive witness who gave contradictory testimony on many issues. We find, as did the Trial Examiner, that Powell made the remark attributed to him by Fisher.

(8) In view of the reasons for our decision, set forth below, it is unnecessary to discuss in detail or to resolve the conflicts in testimony on this point.

on July 23, 1941, Plant Manager George J. Newman issued a notice in the parts plant to the effect that, with certain exceptions not material to this case, "no one is permitted to leave their department without the permission of the foreman in charge" and that unauthorized departure would be cause for dismissal; and that he issued a second notice on August 26, 1941, that "Bright red buttons are being issued to the foremen, who will see each man leaving the department is supplied with one." Despite these notices, Fisher, according to his testimony, was permitted to follow the arrangement he had had with Foreman Powell⁹ in the wing department that he could leave on union business if he merely notified Powell or, in his absence, one of his clerks. However, the record shows that thereafter, during the autumn of 1941, Lawrence E. Mineah, Fisher's foreman, objected to Fisher's leaving the department without his permission, although Fisher had notified Mineah's clerk, and told him to stay on the job in the future.

On December 13, 1941, Fisher admittedly left his department without permission a few minutes before quitting time in order to protest against the respondent's notice regarding Sunday work. On this occasion Newman, according to Fisher, said to him, "What the hell are you? A slant eyed Jap lover, a Hitlerite or a God damned Communist," and warned him, "Fisher, you know you are tread-

(9) When the parts plant opened, Powell became assistant factory manager under Newman.

ing on thin ice * * * The first of the year you are all done.'"¹⁰

On the morning of January 1, 1942, Fisher again left his department on union business, this time after obtaining a "rover's button" by telling one of Mineah's clerks that he had the permission of his supervisor, Elmer Gahlbeck, to leave. On his way through the plant he met Newman and two of his assistants. Newman asked to see Fisher's button, which the latter produced, explaining that he was on union business. Nevertheless, Newman sent him back to his job; and, after obtaining denials from Mineah and Gahlbeck that they had authorized Fisher's departure, Newman told Mineah to discharge Fisher for disobeying company rules. This was done, and Fisher left the plant.

After Fisher's discharge, representatives of the Union in conferences with representatives of the respondent unsuccessfully sought to obtain his reinstatement. Newman stated, however, that he would not reemploy Fisher under any conditions. On March 19, 1942, L. A. Perry, union representative, personally delivered a letter to Wiseman asking whether the Union was correct in believing that the respondent would not further consider Fisher's case. Wiseman refused to accept it, stating that he considered the letter "a legal trick." No attempt

(10) Although Newman denied, in part, the statements attributed to him by Fisher, on the basis of the record as a whole we find, as did the Trial Examiner, that Newman made them substantially as testified to by Fisher.

was made by the Union to have the matter referred to arbitration.

b. Oliver H. Williamson

Williamson worked for the respondent as a jig builder from June 29, 1940, to April 18, 1941, when he resigned. He returned to work during September 1941, and worked on the night shift in the parts plant until April 14, 1942, when he was discharged, allegedly for having caused a disturbance at his place of work.

Williamson joined the Union in September 1940, and became night shift committeeman of his department on March 1, 1942. In that capacity, on April 14, 1942, he protested against the respondent's action in sending a policeman to escort Walter Brown, an employee in his department, out of the plant, a procedure which indicated that Brown had been discharged, whereas actually he had resigned. On this occasion, while trying to find Foreman Milton C. Hangen, Williamson was told by Hangen's assistant, James H. Eastin, to stop his activities and go back to work. Williamson nevertheless continued to talk in a loud voice about the way the plant was being operated to a group of 8 to 12 employees who gathered at the scene. While he was doing so, Henry J. Liegal, the superintendent of the night shift in the parts plant, said to him: "You are one of these damned Union agitators * * * You better be careful or you will know what I am going

to do to you.”¹¹ Liegal and Williamson then started toward Liegal’s office to continue their conversation, but on the way met Hangen, to whom Williamson repeated his strictures against the respondent. Hangen, on Liegal’s instructions, thereupon discharged Williamson; and the notation, “Discharged—Agitator,” was entered on Williamson’s service record.

Thereafter, a committee of the Union met with representatives of the respondent regarding the matter and, as a result of their conferences, Williamson was reemployed on the day shift on May 1, 1942, without loss of seniority, and his employment record was changed to read, “Disciplinary Layoff—2 wks. without pay.” On April 30, 1942, the Union wrote the Regional Director of the Board that the charge previously filed by the Union against the respondent respecting Williamson’s discharge had “been settled to the satisfaction” of the Union.

4. Conclusions as to the alleged refusal to bargain and the alleged discriminatory discharges

The respondent’s alleged refusal to bargain consists of its conduct in connection with the interim individual wage increases, the petitions and notice of December 13, 1941, the crane operators, the employees hired outside California, the third shift,

(11) Although Liegal denied making these remarks, the Trial Examiner credited Williamson’s testimony. We find, as did the Trial Examiner, that the events took place as related by Williamson.

and the job classification schedule.¹² In each of these instances, the respondent took unilateral action in a matter involving the interpretation and administration of its collective contract with the Union. As we point out in Section III B below, it was improper for the respondent to take its action in these matters without prior notice to or consultation with the Union. We are not, however, convinced that this series of unilateral decisions by the respondent was part of a conscious campaign on its part to undermine the authority and prestige of the Union as the collective bargaining representative of the respondent's employees or to evade the respondent's obligation to recognize and deal with the Union as such representative. This, we think, is demonstrated by the respondent's willingness to bargain with the Union as to these matters after the Union had objected to the action taken by the respondent and also by the fact that all but two of the issues thus raised were in fact amicably settled as a result of this collective bargaining between the parties after the event. The two issues not thus amicably disposed of were the operation of the third shift and the job classification schedule adopted by the respondent. With respect to these

(12) At the hearing, counsel for the Board contended that the respondent refused to bargain with the Union in regard to Fisher and also in regard to A. B. Mergen, an employee who was discharged in December 1941, but whose discharge is not alleged to have been discriminatory. The Trial Examiner found no refusal to bargain in either case. The Union has not excepted to his finding, and we agree.

unsettled issues, however, the Union made no attempt to utilize the grievance and arbitration machinery established by its collective contract with the respondent. That contract established a procedure for the handling of grievances and further provided that any dispute between the parties as to the terms, conditions, or rates established in the agreement could, if not amicably settled, be taken to arbitration. The Union has failed to utilize this contractual machinery for the settlement of the disputes which have given rise to the present proceeding, but instead has filed the charges upon which the complaint herein is based. In effect, therefore, we are being asked to intervene in the interpretation and administration of a collective contract, and to pass on disputes as to the meaning of a contract by considering and determining whether any unfair labor practices have taken place within the meaning of the Act.

We have held before that the execution of a collective contract does not end the process of collective bargaining, and that the interpretation and administration of a contract already made and the settlement of disputes arising under any such contract are properly regarded as within the sphere of collective bargaining.¹³ Clearly, therefore, a refusal by an employer to bargain collectively within that area might constitute an unfair labor practice

(13) Matter of North American Aviation, Inc. and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 887, C.I.O., 44 N. L. R. B., No. 118.

within the meaning of the Act; and the existence of a collective contract between the parties involved does not preclude the Board from finding that unfair labor practices have taken place and issuing an appropriate order.¹⁴ We are of the opinion, however, that it will not effectuate the statutory policy of "encouraging the practice and procedure of collective bargaining" for the Board to assume the role of policing collective contracts between employers and labor organizations by attempting to decide whether disputes as to the meaning and administration of such contracts constitute unfair labor practices under the Act. On the contrary, we believe that parties to collective contracts would thereby be encouraged to abandon their efforts to dispose of disputes under the contracts through collective bargaining or through the settlement procedures mutually agreed upon by them, and to remit the interpretation and administration of their contracts to the Board. We therefore do not deem it wise to exercise our jurisdiction in such a case, where the parties have not exhausted their rights

(14) *N.L.R.B. v. Newark Morning Ledger Company*, 120 F. (2d) 266, modifying and enforcing *Matter of Newark Morning Ledger Company and American Newspaper Guild*, 21 N.L.R.B. 988, cert. denied 314 U.S. 693. See also Section 10 (a) of the Act, which provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice * * * affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

and remedies under the contract as to which the dispute has arisen. Under the circumstances, we shall dismiss the complaint herein without prejudice, insofar as it alleges that the respondent refused to bargain collectively with the Union, within the meaning of Section 8 (5) of the Act. We do not now pass on the question of whether the respondent's conduct would under other circumstances constitute unfair labor practices.

Both at the hearing herein and in the course of oral argument before the Board, the parties admitted that the discharge of Fisher (and, by inference, that of Williamson as well) could have been taken to arbitration under the contract.¹⁵ For the reasons stated above, we shall therefore also dismiss the complaint without prejudice, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Arthur J. Fisher and Oliver H. Williamson, within the meaning of Section 8 (3) of the Act.

B. Interference, restraint, and coercion

On April 28 and 29, 1942, Timekeeper Albert L. Condon, acting as temporary union committeeman, interviewed William M. Shanahan, the respondent's treasurer, with respect to a request by employee L. D. Hardman for an increase in pay based upon his length of service in Shanahan's department.

(15) With respect to Williamson, the record shows in addition that the question of his discharge was settled to the mutual satisfaction of the parties through collective bargaining, and we see no reason under the present circumstances for interfering with this settlement.

Hardman was to be transferred to the materials department and desired action to be taken on his pay raise before the transfer took effect, since he would lose his seniority by it. Shanahan had previously told Hardman that his semi-annual wage review would have to wait until he had completed his required length of service and that the department in which it was conducted would depend on where Hardman was employed at that time. Shanahan informed Condon that, since the latter was himself leaving the next day, the matter should be taken up by his successor. Condon testified without contradiction and we find, as did the Trial Examiner, that Shanahan then warned him that, if a grievance were filed in respect to Hardman, the latter's transfer would be canceled with the result that he would be "terminated", and that anyone who tried to do anything about the Hardman case would get into trouble.

Everett M. Shannon, union committeeman for the timekeepers, incurred the displeasure of Shanahan by demanding what the latter considered to be excessively large increases in pay for union timekeepers during the 1942 spring and summer wage reviews, thereby causing the majority of such cases on the lists from April to August, inclusive, to be taken to the general wage committee. Shannon testified that Shanahan at various times during this period demanded that he approve recommendations for increases without consulting the employees involved, urged him to drop his union job, and warned him to stay out of certain departments where his

union work normally took him. Shanahan admitted telling Shannon that he was displeased with the latter's activities in connection with the wage review procedure and that he could not deal with Shannon, but denied making any anti-union statements. Under all the circumstances revealed by the record, and on the basis of his observation of the witnesses, the Trial Examiner credited Shannon's testimony. We find, as did the Trial Examiner, that Shanahan made the statements attributed to him by Shannon.

On February 9, 1942, employee H. M. Prior wrote the Union that he had been promoted to assistant foreman and requested a withdrawal card. Don D. Wilkerson, union representative, told Prior that under the union constitution such a card could be issued only upon his becoming a general foreman, but that he could drop his membership if he so desired. On February 20, Labor Relations Director Wiseman wrote Wilkerson that he knew of Prior's letter and that, since Prior was not within the classification covered by the contract, "it will be appreciated if you will immediately act upon his request."

On May 20, 1942, C. W. Perelle, the respondent's vice president in charge of production, sent a confidential memorandum to William Renison, a supervisor, attaching a list of salaried employees who were "a part of [his] supervision" and who were "still paying dues to the Union," and stating that "obviously this is contrary to our policy." Perelle told Renison to discuss the matter with the em-

ployees affected, and stated: "If the individual does not desire to discontinue his affiliation with the Union, he certainly cannot be permitted to retain his present position, but must be transferred back to a job commensurate with his ability and attitude concerning membership in the Union."¹⁶

On June 2, 1942, the Union, by K. G. Phillips, representative, filed a grievance protesting the respondent's taking certain "hourly paid supervisors who came under the jurisdiction of the Union and placing them on the administrative pay roll (a salaried rate of pay)"¹⁷ as contrary to the contract; protesting the action of Foreman Edward Stuart of the purchasing department in requesting such employees to write letters to the Union asking that they be removed from its rolls; and requesting the return of such transferred employees to hourly rates. About a week later, Phillips met with Thomas E. Vance, supervisor in the respondent's labor relations division. Vance told Phillips that the action of Stuart had been taken pursuant to Perelle's memorandum, which represented the respondent's policy. The record is silent as to whether and how the grievance was settled.

(16) There is no showing that the respondent was attempting to preserve a neutral attitude in union affairs by insisting merely that supervisory employees not engage in union activities which might be regarded as interfering with the rights of non-supervisory employees.

(17) Phillips testified, and we find, as did the Trial Examiner, that such transfers were made without change in the job status of those involved.

We find, as did the Trial Examiner, that by Shanahan's statements to Condon in connection with the latter's presentation of the Hardman case and his statements to Shannon regarding the latter's activities as union committeeman;¹⁸ by the activities of Wiseman and Perelle, highlighted by the latter's instructions that salaried employees who did not withdraw from the Union be transferred back to positions in keeping with their "attitude" toward union membership; and by the statements made by Liegal, Powell, and Newman to Fisher,¹⁹ the respondent interfered with, restrained, and coerced its employees in the exercise of their rights under the Act.

Moreover, we find that the respondent's conduct in connection with the interim individual wage increases, the petitions and notice of December 13, 1941, the crane operators, the employees hired outside California, the third shift, and the job classifications, although not a refusal to bargain collectively with the Union, constituted interference with the rights of its employees under the Act. As the duly designated and recognized bargaining agent of

(18) At the hearing counsel for the Board also contended that the respondent interfered with the union activities of Joseph J. Blake, chairman of the union committeemen in the home plant during the last half of 1941, and of Edward Barnes, also a union committeeman. The Trial Examiner found that the record does not support these contentions. The union has not excepted to his findings, and we agree.

(19) See Section III A 3(a), *supra*.

the employees, the Union was entitled to be notified of and consulted with respect to contemplated action by the respondent changing employees' terms and conditions of employment and affecting the contract between the respondent and the Union. Nevertheless, the respondent, whatever may have been its intent, repeatedly took such action without notice to or consultation with the Union, thereby impairing its status and effectiveness as the bargaining agent of the employees.

We find that the respondent, by its unilateral action in regard to matters within the scope of its contract with the Union, by the statements of Superintendent Liegal to Williamson, by the statements of Foremen Liegal and Powell and Plant Manager Newman to Fisher, by the statements of Treasurer Shanahan to Condon and Shannon, and by the acts and statements of Labor Relations Director Wiseman and Vice-President Perelle in requiring employees to give up their membership in the Union when they were promoted, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes

burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, Aircraft Lodge No. 1125, A.F.L., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, as alleged in the complaint herein.

5. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (5) of the Act, as alleged in the complaint herein.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Consolidated Aircraft Corporation, San Diego, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Post immediately in conspicuous places throughout its San Diego, California, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

- (b) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

And It Is Hereby Further Ordered that the complaint be, and it hereby is, dismissed without prejudice, insofar as it alleges that the respondent engaged in unfair labor practices, within the meaning of Section 8 (3) and (5) of the Act.

Signed at Washington, D. C., this 18th day of February 1943.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

[Seal]

NATIONAL LABOR RELATIONS BOARD

[Title of Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Jack McCaleb being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 18th day of February, 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

International Association of Machinists

Aircraft Lodge No. 1125, A.F.L.

Att: Mr. Roy M. Brown

1054 3rd Street

San Diego, California

Mr. Paul R. Hutchings
International Association of Machinists
Machinists Building
Washington, D. C.

Consolidated Aircraft Corporation
Lindbergh Field
San Diego, California

Mr. Royal E. T. Riggs
Seibert & Riggs
30 Broad Street
New York, N. Y.

Mr. H. E. Weihmiller
Consolidated Aircraft Corp.
610 Trust Bldg.
Washington, D. C.

Mr. Vern B. Thomas
c/o Consolidated Aircraft Corp.
San Diego, California

Pruitt, Hale & Coursen
420 Lexington Avenue
New York, N. Y.

Mr. Harris G. Nelson
c/o Consolidated Aircraft Corp.
San Diego, California

/s/ JACK McCALEB

Subscribed and sworn to before me this 18th day
of February 1943.

[Seal] KATHRYN B. HARRELL
Notary Public, D. C.

My commission expires March 1, 1947.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10389

CONSOLIDATED AIRCRAFT CORPORA-
TION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF DECISION OF
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now Consolidated Aircraft Corporation, a corporation organized and existing under the laws of the State of Delaware, and files its petition, pursuant to the provisions of Section 10 of the Act of Congress of July 5, 1935 (Ch. 372, 49 Stat. 449, U. S. Code, Title 29, §§ 151-166), known and cited as the National Labor Relations Act, for the review of the decision and order of the National Labor Relations Board entered at Washington, D. C., on February 18, 1943, ordering that petitioner cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose

of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act; and respectfully shows to the Court as follows:

I.

Jurisdiction

The petitioner is a corporation organized and existing under the laws of the State of Delaware. Petitioner's principal office and place of business is in the City of San Diego, California.

Respondent, National Labor Relations Board, (hereinafter referred to as the "Board"), is an agency of the Government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (Ch. 372, 49 Stat. 449, U. S. Code, Title 29, §§ 151-166), commonly known, referred to, and cited as the National Labor Relations Act. Said Board has an office and Regional Director at Los Angeles, California, within the Ninth Circuit and within the jurisdiction of this court. As will hereinafter more fully appear, the so-called unfair labor practices in which it is alleged in this proceeding that the petitioner has been engaged, all occurred at San Diego, California, within the Ninth Circuit and within the jurisdiction of this Court.

II.

Statement of Proceedings

The proceedings were begun by the filing of a second amended charge on July 17, 1942 by International Association of Machinists, Aircraft Lodge

No. 1125, A.F.L. The Board, by the Regional Director for the Twenty-first Region at Los Angeles, California, issued its complaint dated July 23, 1942 against the petitioner, alleging that the petitioner had engaged in and was engaging in unfair labor practices, within the meaning of Section 8(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act.

The petitioner filed a motion for a bill of particulars, dated July 30, 1942, which was granted in part, and filed an answer dated July 31, 1942, in which it denied the commission of any unfair labor practices, and alleged certain affirmative matter by way of defense.

Pursuant to notice a hearing was held at San Diego, California from September 1 through September 8, 1942, before Joseph L. Hektoen, trial examiner. The Board and the petitioner were represented by counsel and participated in the hearing. Witnesses were introduced and cross-examined.

At the close of the Board's case counsel for the petitioner moved to dismiss the complaint and each of its allegations of unfair labor practices for failure of proof. The motions were denied and were renewed at the close of the hearing, and again denied.

Thereafter, the trial examiner filed his intermediate report, dated October 16, 1942, copies of which were served upon the parties, and found that the petitioner had engaged in and was engaged in unfair labor practices affecting commerce within

the meaning of Section 8(1), (3) and (5) and Section 2(6) and (7) of the Act, and recommended that petitioner should cease and desist from failing to bargain collectively with its employees, and that petitioner should reinstate one Arthur J. Fisher, alleged to have been discharged because of union activities, and that petitioner should cease and desist from interference, restraint and coercion of its employees in the exercise of the rights guaranteed under Section 7 of the Act.

Thereafter, a hearing was held before the Board in Washington on December 3, 1942, at which petitioner and the union were represented by counsel.

On February 18, 1942 the Board handed down its decision and order and statement of the case in which the Board dismissed without prejudice the charges that the petitioner refused to bargain collectively within the meaning of Section 8(5) of the Act, and dismissed without prejudice the charge that petitioner discriminated in regard to the hire and tenure of employment of said Fisher within the meaning of Section 8(3) of the Act, but found that the petitioner had interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and issued an order that the petitioner cease and desist from such practices and post a notice with reference thereto in its San Diego Plant.

A true copy of the said decision and order is hereto attached, marked Exhibit "A", and is made a part hereof.

III.

Declaration of Court

That petitioner is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business in the City of San Diego, California, and being aggrieved by the rulings, findings of fact, conclusions of law, opinion, decision and order aforesaid, asks a review thereof in accordance with the provisions of Section 10 of the National Labor Relations Act, by the United States Circuit Court of Appeals of the Ninth Circuit, within which circuit is located petitioner's place of business where the unfair labor practices in question are alleged to have been engaged in, and where the petitioner transacts business.

IV.

Assignments of Error

Petitioner, as a basis for review, makes the following assignments of error, to-wit:

(1) The Board's findings of fact in that part of the decision headed "B. Interference, restraint, and coercion" as to unfair labor practices on the part of this petitioner towards its employees are not supported by substantial evidence.

(2) The Board's findings of fact in that part of the decision headed "B. Interference, restraint, and coercion" are contrary to the evidence and contrary to the law.

(3) The Board's findings of fact in that part of the decision headed "B. Interference, restraint,

and coercion” as to unfair labor practices fail to show any acts of interference, restraint or coercion, or if such practices are regarded as attempted, fail to show that said acts resulted in any interference, restraint or coercion of any employees.

(4) The Board’s findings of fact in that part of the decision head “B. Interference, restraint, and coercion” afford no reasonable basis for an inference that unfair labor practices on the part of the petitioner are likely to continue in the future and afford no basis for relief in a court of equity.

(5) Finding IV entitled “The effect of the unfair labor practices upon commerce” is contrary to the evidence, contrary to the weight of evidence, not supported by substantial evidence, and is contrary to law.

(6) The Board erred in overruling the objection of the petitioner to the admission in evidence of Board’s Exhibit’s 8(a) to (e) inclusive.

(7) The Board erred in overruling petitioner’s motions to dismiss each of the allegations of unfair labor practices made by the petitioner at the close of the hearing.

(8) The Board erred in refusing to dismiss the complaint in its entirety.

(9) The facts found under that part of the decision headed “B. Interference, restraint and coercion” form no basis for the conclusions of law numbered 2 and 3 in the said decision and order, and the said conclusions of law numbered 2 and 3 are contrary to the facts and contrary to the law.

(10) The record affords no reasonable basis for an order of a court of equity that petitioner cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

V.

Prayer

Wherefore, the petitioner petitions this court for a review of the decision, findings, and order of the National Labor Relations Board dated February 18, 1943, and prays:

(1) That a copy of this petition and of the process of this court be served upon the respondent, National Labor Relations Board, as provided by Section 10 (f) of the National Labor Relations Act.

(2) That the National Labor Relations Board be directed and required by an appropriate order of this court, forthwith, to certify and file with this court, pursuant to Section 10 (f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including therein the trial examiner's report, and findings upon the facts, including all the exhibits and the originals of all papers filed with the Board from which the complaint was formulated and issued.

(3) That this petition for a review be preferred and heard and determined expeditiously.

(4) That the said decision and finding set forth under "B. Interference, restraint and coercion" and the provisions of the order be annulled, vacated, and set aside.

(5) That the National Labor Relations Board be ordered and directed to dismiss the complaint and proceedings.

(6) That the petitioner shall have such other and further relief as may be just and proper in the premises.

Dated this 11th day of March, 1943.

CONSOLIDATED AIRCRAFT
CORPORATION

By H. WOODHEAD
President

(Duly Verified.)

"EXHIBIT A"

[Printer's Note: Exhibit A is a copy of the Decision and Order of February 18, 1943, and is identical with the Decision and Order printed in full at pages 88 to 120 of this printed record.]

[Endorsed]: Filed Mar. 15, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U.S.C., Sec. 151, et seq.), hereinafter called the Act, files this answer and request for enforcement of the Board's order.

1. The Board admits the allegations contained in paragraph I. of the Petition for Review.

2. Answering the allegations contained in paragraphs II. and III. of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herein, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

3. The Board denies each and every allegation contained in paragraph IV., in the subsections thereunder numbered (1)-(2) and (5)-(10), inclusive, of the Petition for Review.

4. Answering the allegations contained in paragraph IV., subsection (3) of the Petition for Review, the Board denies the allegations of such subsection insofar as they allege that "The Board's

findings of fact in that part of the decision headed 'B. Interference, restraint, and coercion' as to unfair labor practices fail to show any acts of interference, restraint, or coercion"; and

Answering the remaining allegations contained in that subsection, the Board neither admits nor denies such allegations, but states further that they are irrelevant and immaterial to any issue in this proceeding.

5. Answering the allegations contained in paragraph IV, subsection (4) of the Petition for Review, the Board neither admits nor denies the allegations of that subdivision, but states further that such allegations are irrelevant and immaterial to any issue in this proceeding.

6. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board, were and are in all respects valid and proper under the Act.

Wherefore, having answered each and every allegation contained in the Petition for Review, the Board respectfully prays this Honorable Court that said Petition be denied insofar as it prays that the Board's order be set aside and that petitioner shall have other and further relief.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on February 18, 1943, in proceedings designated on the records of the Board as Case No. C-2378, entitled "In the Matter of Consolidated Aircraft Corporation and

International Association of Machinists, Aircraft Lodge No. 1125, A.F.L.”

In support of this request for enforcement of its order, the Board respectfully shows:

(a) Petitioner, a Delaware corporation, is engaged in business within this judicial circuit. This Court has jurisdiction of the Petition for Review herein and of this request for enforcement by virtue of Section 10 (a) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, bill of particulars, answer, order of the Trial Examiner directing counsel for the Board to furnish certain particulars, hearing for the purpose of taking testimony and receiving other evidence, brief filed with the Trial Examiner, Trial Examiner's report and exceptions filed thereto and brief filed in support thereof, and oral argument before the Board, as more fully shown by the certified record filed herewith, the Board on February 18, 1943, duly stated its findings of fact and conclusions of law, and issued its order directed to petitioner, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Consolidated Aircraft Corporation, San Diego, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Post immediately in conspicuous places throughout its San Diego, California, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

- (b) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

- (c) On February 18, 1943, the Board's decision

and order was duly served upon petitioner and all other parties.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board has certified the filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and of the filing of the certified transcript of the entire record in said proceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceedings and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire record of said proceeding, and upon so much of the order made thereupon set forth hereinabove, a decree denying the petition to review and set aside, and enforcing in whole said order of the Board, issued on February 18, 1943, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 21st day of April 1943.

NATIONAL LABOR RELATIONS BOARD

By ERNEST A. GROSS

Associate General Counsel

(Duly Verified.)

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1988

In the Matter of:

CONSOLIDATED AIRCRAFT CORPORATION (San Diego, California),

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AIRCRAFT LODGE 1125, A. F.
of L.

TESTIMONY

Conference Room,
Chamber of Commerce Building,
San Diego, California

Tuesday, September 1, 1942

The above-entitled matter came on for hearing,
pursuant to notice, at 10:30 o'clock a. m.

Before:

Josef L. Hektoen, Trial Examiner.

Appearances:

Daniel J. Harrington,

Room 808 United States Post Office and
Court House Bldg., Los Angeles, California,
on behalf of National Labor Relations
Board.

Charles M. Ryan,

808 United States Post Office and Court
House Building, Los Angeles, California,
on behalf of National Labor Relations
Board.

Royal E. T. Riggs, and Vern B. Thomas,

Consolidated Aircraft Corporation, San
Diego, California, on behalf of Consoli-
dated Aircraft Corporation. [2*]

PROCEEDINGS

Trial Examiner Hektoen: We will be in order, please.

This is a formal hearing in the matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125, American Federation of Labor. Case No. XXI-C-1988, before the National Labor Relations Board.

The Trial Examiner appearing for the National Labor Relations Board is Josef L. Hektoen, and the appearances as I have them for the Board are Daniel J. Harrington and Charles M. Ryan; and for the Aircraft, Royal E. T. Riggs and Vern B. Thomas, both of San Diego.

I presume that the Union is not represented by counsel. Is that right?

Mr. Ryan: The Union has no counsel here, do they, Mr. Brown?

Mr. Brown: No.

Trial Examiner Hektoen: The official reporter

* Page numbering appearing at top of page of original Reporter's Transcript.

makes the only transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

Should corrections become necessary in the record during [4] the hearing, the parties desiring the corrections will submit the suggested corrections to the other party or parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner. If the parties cannot agree upon the proposed corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a stipulation concerning such matters after the close of the hearing, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. But after the receipt of the intermediate report, all such communications should be directed to the Board itself, inasmuch as the Trial Examiner's connection with the case ceases upon the transfer by the Board of the case to its staff.

Arguments with respect to motions or objections will not ordinarily appear in the official transcript. If counsel desire to argue motions or objections, they will please so indicate to the Trial Examiner

who may, if he considers argument necessary, go "off the record" for the purpose of hearing such argument. The official reporter takes everything that is said during the hearing by counsel, witnesses, and the Trial Examiner, unless the latter orders an off the record discussion. [5]

All requests to go off the record will, of course, be directed only to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearings are to be filed with the Trial Examiner. All exhibits offered in evidence shall be in duplicate.

At the close of the hearing the parties may, if they so desire, argue orally before the Trial Examiner, if he believes that oral argument will be beneficial to his understanding of the contentions of the parties and the factual issues involved. The Trial Examiner may request oral argument from the parties and will feel free to discuss this and ask questions of the counsel or representatives of the parties with respect to their contentions as to the issues. Such argument will not be included in the record unless so ordered by the Trial Examiner.

Any party shall be entitled, upon request made at or before the close of the hearing, to file a brief

with the Trial Examiner who, before closing the hearing, will then indicate the time within which from the close of the hearing such briefs may be filed. Five copies thereof will be [6] directed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

I have one or two other announcements to make. I dislike to make the ruling, in view of the fact that many of us seem to smoke, but we won't have any smoking during the hearing.

Also, in view of the situation in which the respondent finds itself, I want to announce now that in order that there may be a minimum of interruption through operations, I would be very glad to hold the hearing at any time and anywhere that would be more convenient, and eliminate any interruptions.

I have no other ideas about the situation, but I want counsel to know that now.

In the absence of anything further, I take it you can go ahead with the formal papers. [7]

Mr. Harrington: May I sit while I introduce these formal exhibits?

Trial Examiner Hektoen: Surely.

Mr. Harrington: If it please the Examiner, I should like to offer to be marked for identification as Board's Exhibit 1, with the appropriate subdivisions, the formal papers upon which this proceeding rests.

As Board's Exhibit 1-A, the second amended charge, filed on July 17, 1942, by International

Association of Machinists, Aircraft Lodge No. 1125, A. F. of L.

As Board's Exhibit 1-B, the complaint in this matter, signed by William R. Walsh, Regional Director for the Twenty-First Region of the National Labor Relations Board.

As Board's Exhibit 1-C, the notice of hearing in this matter signed by William R. Walsh, Regional Director for the Twenty-First Region of the National Labor Relations Board.

As Board's Exhibit 1-D, the affidavit of service signed by Marian Reimer, attesting to service of parties of the complaint, notice of hearing and the second amended charge on Consolidated Aircraft Corporation and on International Association of Machinists, Aircraft Lodge No. 1125, A. F. of L.

As Board's Exhibit 1-E, a sheet of paper to which are attached two postal return receipts attesting to service of the complaint, notice of hearing and second amended charge on [8] Consolidated Aircraft Corporation and International Association of Machinists.

As Board's Exhibit 1-F, a motion for a bill of particulars filed on July 30, 1942, by Consolidated Aircraft Corporation and signed by I. M. Laddin, Vice President and General Manager.

As Board's Exhibit 1-G the answer filed by Consolidated Aircraft Corporation in this proceeding and signed by W. Frank Persons, director of industrial relations department.

As Board's Exhibit 1-H the order designating Josef L. Hektoen as Trial Examiner.

As Board's Exhibit 1-I, the order signed by Josef L. Hektoen, Trial Examiner, ordering counsel for the Board to furnish a bill of particulars.

As Board's Exhibit 1-J, a bill of particulars dated August 7, 1942, and signed by Guy Farmer, Attorney for the National Labor Relations Board.

As Board's Exhibit 1-K, affidavit of service signed by Ida M. Meyers of the bill of particulars on Consolidated Aircraft Corporation and on International Association of Machinists.

As Board's Exhibit 1-L, a sheet of paper to which are attached two postal return receipts, attesting to service of the bill of particulars upon consolidated Aircraft Corporation and upon International Association of Machinists, Aircraft [9] Lodge No. 1125, A. F. of L.

As Board's Exhibit 1-M an order and notice of continuance signed by Robert Davies, Acting Regional Director for the Twenty-first Region of the National Labor Relations Board.

As Board's Exhibit 1-N affidavit of service signed by Ida M. Meyers, attesting to service of the order, notice of continuance on Consolidated Aircraft Corporation and on International Association of Machinists.

As Board's Exhibit 1-O, a sheet of paper to which are attached two postal return receipts attesting to service of the order and continuance of hearing upon the Consolidated Aircraft Corporation and on International Association of Machinists.

(The documents referred to were marked as Board's Exhibit 1-A to 1-O (inclusive) for identification.)

Mr. Harrington: I now show Board's Exhibits 1-A to O for identification to counsel (handing exhibit to Mr. Riggs.)

Mr. Riggs: I have no objection to any of these being received in evidence.

Trial Examiner Hektoen: Board's Exhibits 1-A to 1-O, both inclusive, may be admitted.

(Thereupon the documents heretofore marked for identification as Board's Exhibits 1-A to 1-O, inclusive, were received in evidence.)

[Printer's Note: Board's Exhibits Nos. 1-A to 1-O, inclusive, are set out in full at pages 1 to 32 of this printed record.]

Mr. Harrington: I now offer as Board's Exhibit 2 for [10] identification, a stipulation as to the business of the Consolidated Aircraft Corporation, signed by Mr. Riggs, as counsel for the corporation and by myself as attorney for the Board.

Mr. Riggs: No objection.

Mr. Harrington: I offer them in evidence as Board's Exhibit 2.

(The document referred to was marked as Board's Exhibit No. 2, and was received in evidence.)

BOARD'S EXHIBIT No. 2

[Title of Board and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between Consolidated Aircraft Corporation, by its undersigned representative, and Daniel J. Harrington, attorney for the National Labor Relations Board, as follows:

1. That Consolidated Aircraft Corporation is a Delaware Corporation with its main office and plant at San Diego, California.

2. That Consolidated Aircraft Corporation is engaged in the design, manufacture, development and sale of aircraft, aircraft parts, and accessories.

3. That Consolidated Aircraft Corporation is one of the largest manufacturers of air boats in the United States, one of the largest contractors to the United States Navy for aircraft, and the second or third largest airplane manufacturing establishment in the United States.

4. That Consolidated Aircraft Corporation, in the course and conduct of its business, during the fiscal year ending November 30, 1941, spent in excess of \$5,000,000 for the purchase of materials, supplies and equipment, more than 50 percent thereof being purchased and transported from outside the State of California.

5. That Consolidated Aircraft Corporation, in the course and conduct of its business, during the fiscal year ending November 30, 1941, made sales of products aggregating \$95,000,000.

6. That substantially all of the sales of Consolidated Aircraft Corporation in the course and conduct of its business, during the fiscal year ending November 30, 1941, represented deliveries made outside the State of California, except that sales by Consolidated Aircraft Corporation, in the course and conduct of its business, during the fiscal year ending December 31, 1941, to the United States Army or the United States, were made F.O.B. factory at San Diego.

7. That Consolidated Aircraft Corporation is engaged in interstate commerce within the meaning of the National Labor Relations Act and the decisions of the United States Supreme Court thereunder.

Dated: This 1st day of September, 1942.

CONSOLIDATED AIRCRAFT
CORPORATION.

By ROYAL E. T. RIGGS,

By Counsel.

DANIEL J. HARRINGTON,

Attorney National Labor

Relations Board.

[Title of Board and Cause.]

APPLICATION FOR SUBPOENA

The respondent hereby requests the issuance of a subpoena requiring Herman Wiseman to attend the hearing in this matter on the 5th day of September, 1942, at the Conference Room, Chamber of Commerce Building, San Diego, California, at 10:30

A. M. and requiring him to testify as a witness on behalf of the respondent.

The nature of the facts to be proved by said witness is as follows:

That the witness was appointed by the respondent to a committee delegated to meet with representatives of the International Association of Machinists, Aircraft Lodge #1125, A.F.L.; that he was present at approximately all of the conferences held by said committees and is familiar with the subjects and grievances which came up for discussion and negotiation and will testify concerning such subjects and grievances.

Respectfully submitted,

CONSOLIDATED AIRCRAFT
CORPORATION.

By ROYAL E. T. RIGGS.

Office and Post Office address of Respondent:
3302 Pacific Highway, San Diego, California.

To

Trial Examiner.

Mr. Harrington: Mr. Examiner, do you desire at this time to read the complaint?

Trial Examiner Hektoen: I have already ordered a bill of particulars filed so I consider myself fairly familiar with it. [11]

BOARD'S EXHIBIT No. 3

Agreement
Between
Consolidated
Aircraft
Corporation
and the
International
Association of
Machinists,

Aircraft Lodge No. 1125
American Federation of Labor
San Diego, California

Covering all hourly-paid employes of Consolidated
Aircraft Corporation with respect to rates of
pay, wages, hours, and other conditions
of employment.

12 June, 1941

With Amendments to 5 March 1942.

FOREWORD

This agreement has been negotiated in accordance with law and in compliance with two certifications of the National Labor Relations Board following elections at which the hourly-paid employees of Consolidated Aircraft Corporation selected the International Association of Machinists, Aircraft Lodge No. 1125, which may, for the convenience of the Lodge and by mutual consent of the parties hereto, be divided into sub-lodges thereof, to represent them as the collective bargaining agency with the company.

(Board's Exhibit No. 3—Continued)

UNION AGREEMENT

Agreement made this 12th day of June, 1941, between Consolidated Aircraft Corporation, herein called the "Company" and International Association of Machinists, Aircraft Lodge No. 1125, herein called the "Union";

Witnesseth:

Whereas, there have been held at the company's plant at the direction and under the supervision of the National Labor Relations Board two separate and successive elections for the unit defined by said Board as comprising the then hourly-paid employees of the Company to determine representation for the purpose of collective bargaining with their employer, and

Whereas, in such elections the Union received a majority not only of the ballots cast but also of all employees qualified to vote and embraced within such unit, and

Whereas, the Union desires to enter into agreement with the Company with respect to rates of pay, wages, hours, and other conditions of employment, and

Whereas, it is the purpose of this agreement to promote continuity of work by friendly relations between the Company and the Union:

Now, Therefore, in consideration of the premises, the parties hereto agree as follows:

1. Recognition: The Company recognizes the

(Board's Exhibit No. 3—Continued)

Union as the exclusive collective bargaining representative of all employees in the unit defined by the National Labor Relations Board, namely, all hourly- (4) paid employees and salaried inspectors (except supervisory inspectors and confidential clerks). During the term of this Agreement, in lieu of the Union's request for a closed or Union shop or preferential hiring, all persons who are hereafter employed by the Company and who are eligible for membership in the Union shall be given by a Company representative before beginning work a copy of this Agreement, a Company Rule Book, and a Union membership application to which is attached a dues deduction order, to run for the term of this agreement, which membership and order the Company hereby recommends providing the total initial cost of such membership is not greater than \$5.00 and the dues are not greater than as set forth in Section 3 hereof. The Union agrees that there shall be no solicitation of employees for Union membership or for dues, fines, or assessments, on Company time, and that it will accept for Union membership for the term of this contract any present or future hourly-paid employee of the Company, and that the Union will not discriminate in any way against any employee because, before joining the Union, he may have opposed it or its acts in any manner. The Company agrees to distribute the above stated literature to all its present employees who are eligible for membership in the Union, and to recommend their joining.

(Board's Exhibit No. 3—Continued)

2. Rates of Pay: Effective 9 August, 1941, the minimum rate of pay of all present and future employees of the Company (unless an apprentice or training system is adopted) shall be 60 cents an hour for the first four weeks of continuous employment; 65 cents an hour for the second four weeks of such continuous employment; 70 cents an hour for the third four weeks of such continuous employment; and 75 cents an hour after the twelfth week of such continuous employment.

An eight cent an hour bonus shall be paid all hourly-paid employees on night shifts, and on regular day shifts which include both Saturdays and Sundays.

Leadmen shall be paid at least eight cents per hour more than the highest rate paid to employees regularly assigned to work under their supervision, and supervisors shall be paid ten cents an hour more than the highest rate paid to leadmen regularly assigned to work under their supervision.

3. Wage Rates: The Union and the Company shall establish and maintain joint committees to review by mutual agreement hourly wage rates of employees in each department upon completion of each individual's six months period of continuous employment with the Company. Each wage review committee shall consist of six members, three from the Union and three from the Company, who are Company employees. One of the Union members shall be rotated so that the Union Committeeman of each department can serve as a member of the

(Board's Exhibit No. 3—Continued)

Committee during the time the rates of his department are being reviewed. If a wage review committee fails to reach an agreement in regard to any case brought before it, then and in that event, the matter in question shall be referred in writing within 24 hours to a General Wage Committee consisting of three men from each party to this Agreement. Within five days after the General Wage Committee has received a deadlocked case, a decision shall be handed down. In the event the General Wage Committee is unable to reach an agreement, the matter shall be submitted to arbitration as provided for in Article 23 of this Agreement. In accordance with past practice, the Company will approve interim individual increases when justified by proof of the individual involved that he has been performing work which work calls for a higher rate, job or wage classification to the satisfaction of his foreman. In all such cases the foreman and the Union Com- (6) mitteeman shall be consulted prior to the granting of such increases.

Effective 3 May 1941, the Company granted five cents an hour increase to every employee covered by this 12 June 1941 Agreement in lieu of all privileges under the 15 April 1940 Agreement.

Retroactive to 9 August 1941, in lieu of all privileges under the second and third paragraphs of Section 3 of this 12 June 1941 Agreement (which paragraphs are hereby cancelled), the Company grants thirteen cents an hour increase to every employee who was on 11 October 1941 receiving more than 65 cents an hour.

(Board's Exhibit No. 3—Continued)

When ordered by an employee, the Company will deduct, either weekly or monthly at its election, the dues prescribed by the Union, the maximums of which are designated hereinbelow, from the employee's pay and remit this amount to the Union. These deductions for dues will start within 10 days after the receipt by the Company of the employee's order and will stop with the termination of this Agreement, or within the week prior to the week in which the employee is terminated.

In no event shall the dues exceed 50 cents a week for journeymen mechanics and specialists (employees receiving a base pay of 80 cents an hour and over) and 35 cents a week for production workers and helpers (employees receiving a base pay of 79 cents an hour and less). No deduction shall be made in any week for dues if the employee's earnings, after deducting social security taxes, group insurance premiums, and amounts due to the Company for tool sales, advances, etc., is insufficient to cover the full weekly deduction for such dues.

4. Hours: The work week shall consist of forty hours of five consecutive days, from Monday through (7) Friday, except for custodial employees such as maintenance men, guards, and janitors, and accounting and confidential clerks, when shifts are being rotated. With the exception of such employees, eight hours shall be worked within nine consecutive hours.

5. Overtime Pay: Work after eight hours on any shift shall be considered overtime, payable at

(Board's Exhibit No. 3—Continued)

time and one-half. After three hours overtime on any one day and eight hours overtime on Saturday (payable at time and one-half), double time shall be paid. With the exception of custodial employees, work on the seventh consecutive day shall be paid for at double time.

6. Shift Rotations: Custodial employees who may be involved in both Saturday and Sunday work, may be rotated every fifth week after they have completed five consecutive days and have one day's rest thereafter without overtime penalty for the seventh day.

7. Recognized Holidays: The following shall be considered double time holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

8. Representation: For each 500 employees, the Union may appoint one member to its shop committee, and a committee chairman for each shift. With the approval of the Union, each Committeeman may select one steward for each 175 employees or major fraction thereof. The Union shall furnish the Company an accurate list of all committeemen and stewards and keep the Company informed as to all changes therein.

9. Complaints and Grievances: The Company desires that unfairness to its employees shall not exist, and that complaints shall be settled whenever (8) possible with its foremen in the shop or de-

(Board's Exhibit No. 3—Continued)

partment where the complaint or grievance originates.

Whenever a complaint or grievance develops in any shop or department of the Company the following steps shall be taken:

(1) The complainant shall first discuss his case with his foreman in charge in an effort to arrive amicably at a mutually satisfactory settlement. In case this effort fails:

(2) The complainant shall contact his shop chairman or shop committeeman; and they in turn shall together contact the foreman in a further effort to settle the issues involved. In all cases where this effort fails to bring mutual agreement:

(3) The employee and his committeeman or chairman shall immediately reduce to writing on a grievance form the complaint or grievance.

This grievance form is to be filled out in quadruplicate; one copy to remain with the foreman of the department where the complainant is employed; one copy to be retained by the shop committeeman or chairman; one copy to be forwarded to the general offices of the Union where it will be turned over to the Business Representative charged with the responsibility of servicing the department or shop of the employee involved; and the fourth copy shall be forwarded by the foreman to the Labor Relations Department.

Within twenty-four (24) hours after this grievance form has been filed with the foreman, the shop committeeman or chairman and the employee in-

(Board's Exhibit No. 3—Continued)

volved shall meet with the Labor Relations Director or his authorized representative. If the parties above find themselves unable to agree on a settlement within forty-eight (48) hours after the case was referred to them: (9)

(4) Then and in that event the case shall be referred to the Labor Relations Committee of the Company, and the Union Committee composed of the Business Representative and the shop committeeman or chairman of the shop or department involved. These two committees shall meet; and within five days after the case was referred to them, hand down their final decision on the grievance before them. If these two committees are unable to agree:

(5) The case shall be referred to arbitration as provided for in Article 23 of this agreement.

10. Discharge: When requested in writing by a discharged employee, the Company, following present practice, will furnish either the employee or the Union with the reason why such employee was discharged.

11. Regulations: The Union and the Company agree that the regulations set forth in the Company's Rule Book, attached to and made a part of this agreement, are necessary for the efficient operation of the Company's plant, and that infraction of any rule constitutes cause for discharge or disciplinary action.

12. Intimidation and Discrimination: The Company agrees not to intimidate nor in any way discriminate against any employee because of Union

(Board's Exhibit No. 3—Continued)

activities; the Union agrees not to intimidate nor in any way discriminate against any employee not belonging to the Union.

13. **Calls and Reporting:** If a man is called other than for his regular shift or continuous extension thereof, he shall receive two hours' minimum pay.

14. **Bulletin Board:** The Company will locate and supply on its premises sufficient bulletin (10) boards for the use of the Union. The Union agrees to sign all its notices (which notices shall not malign the Company or employees), and to submit all notices to the management for approval. The Company agrees to post promptly each approved notice on all bulletin boards.

15. **Union Activities on Company Property:** The Union agrees not to distribute literature, handbills, or printed matter on Company property.

16. **Seniority:** The Company, in accordance with past practice, will continue in lay-offs to recognize seniority where ability, production, and conduct have been equal.

17. **Leaves of Absence With Pay:** Each hourly-paid employee who has completed one year of continuous service with the Company shall be granted annually a leave of absence with pay of 12 eight-hour work days (96 hours) which may be used by the employee as vacation, sick leave, or time-off with pay on recognized holidays that fall on regular working days. An employee forfeits his time-off with pay if absent ten regular working days during the twelve-month period unless such absence

(Board's Exhibit No. 3—Continued)

is due to an authorized leave, physical disability, serious illness or death in the employee's immediate family, or compulsory jury, military, or naval, all subject to verification by the Company. Leaves with pay shall not be cumulative and must be extinguished within twelve months after the period of eligibility begins. The Company may grant an employee pay in lieu of time-off with pay. This pay shall be computed at the employee's regular hourly rate. The management will attempt to grant vacations at times requested. However, the Company may allocate certain times at which paid vacations must be taken. The employee must indicate in writing before the expiration of the pay week whether he desires to receive pay for the time lost during that week. (11) Employees shall not be paid for fractional parts of a day. Termination of employment will automatically cancel the right of an employee to receive time-off with pay or to be recompensed therefor.

Leaves of Absence Without Pay: In pursuance of the Company's regularly established practice, leaves of absence without pay and without loss of seniority will be granted to employees for a length of time commensurate with the reason for such absence. The granting or disallowance of requests for leaves of absence shall be left entirely to the management of the Company.

Not more than six employees of the Company selected by the Union to do work for the Union which takes them away from their regular employment

(Board's Exhibit No. 3—Continued)

shall be granted leaves of absence without pay of not more than 30 working days in each calendar year.

Leaves of absence with seniority right unimpaired shall be granted to full-time officers of the Union, provided such officers have had 12 months of prior continuous employment with the Company.

19. Transfers: Where an employee is transferred from one department to another and the work performed is similar and the skill required the same, his rate will not be changed.

20. Efficiency and Production: The Union agrees to submit in writing from time to time recommendations for improving the efficiency and increasing the production of the plant.

21. Training Plan: The Company will immediately inaugurate a study of the feasibility of establishing a training or apprentice plan either as a company function or in collaboration with Federal and State educational authorities which will enable its employees to increase their skill. (12)

22. Military Service: If any employee subject to this agreement shall enter military service by conscription under the Selective Service Training Act of 1940, and the Active Service Act, such employee shall be granted a leave of absence for the duration of service without loss of seniority rights. If the United States becomes actively engaged in war, any employee covered by this agreement who enters the military service either by conscription or voluntarily, shall be granted a leave of absence without loss

(Board's Exhibit No. 3—Continued)

of seniority for the duration of his military service during the war. Upon termination of such military service, if such employees shall request re-employment and if production warrants such re-employment and if the employees are physically able to do the work available, the Company will re-employ such persons in preference to all other persons in their occupations with less seniority.

23. Arbitration: In order to protect the National Defense Program and the continuity of work for the United States Government, it is agreed that if any of the terms, provisions, or rates covered by this agreement are not settled satisfactorily by the parties hereto, the matter in dispute shall be referred to arbitration as follows:

The Company shall designate 2 representatives, and in like manner the Union shall designate 2 representatives. Said 4 representatives shall meet within 3 days after notification, and in the event that satisfactory settlement is not reached within 5 days after such notification, the United States National Defense Mediation Board shall be requested to designate a fifth member to the arbitration board. The decision of the majority of this arbitration board of 5 members shall be final and binding upon the parties hereto.

The Union agrees that there shall be no strike or slow-down, and the Company agrees that there shall (13) be no shut-down or lock-out, while matters are being considered under this section.

24. Boycott: The Union agrees that it will not

(Board's Exhibit No. 3—Continued)

permit its members to refuse to perform any work or handle materials or machinery or equipment because of the sources of supply or the Union affiliation or non-affiliation of the labor engaged in such supply or at such work.

25. Term: This agreement shall run two years from its date or for the period of the Unlimited National Emergency proclaimed by the President of the United States on 27 May 1941, whichever is the longer, or until amended by agreement after 15-day notice by either party. This agreement supersedes the agreement of 15 April 1940, and all previous agreements, whether written or oral, between the parties hereto.

CONSOLIDATED AIRCRAFT
CORPORATION,

R. H. FLEET,

President.

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS:

C. L. BENTLEY,

Grand Lodge Representative.

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS,
AIRCRAFT LODGE, No. 1125:

WALTER J. CHUDLEIGH,

Pres.

R. J. BRAGG,

DON WILKERSON,

JOSEPH J. BLAKE,

N. R. PYEATT. (14)

(Board's Exhibit No. 3—Continued)

Sections 2 and 3 hereinabove show the higher pay-rates negotiated under the National Defense Mediation Board and agreed to 18 October 1941.

CONSOLIDATED AIRCRAFT CORPORATION,

R. H. FLEET,

President.

W. J. CHUDLEIGH,

President I. A. M. Lodge 1125.

R. B. FELTON,

Business Representative, District
22.

GEO. CASTLEMEN,

Vice-President International Assoc. of Machinists.

Section No. 3, first paragraph, and Section No. 9 of 12 June 1941 Agreement amended 5 March, 1942.

CONSOLIDATED AIRCRAFT CORPORATION,

H. WOODHEAD,

President.

INTERNATIONAL ASSOCIATION OF MACHINISTS,
AIRCRAFT LODGE No. 1125.

ROY M. BROWN,

Grand Lodge Representative,
I. A. of M.

J. E. BRUCE,

Business Representative,
Lodge 1125.

(Board's Exhibit No. 3—Continued)

L. A. PERRY,

Business Representative,
Lodge 1125.

K. G. PHILLIPS,

Business Representative,
Lodge 1125.

D. D. WILKERSON,

Business Representative,
Lodge 1125 (15)

Aeronautical

Mechanics

Lodge No. 1125

Business Offices

and

Meeting Hall

1054 Third Avenue

San Diego, California

Meetings

Night Shift—

1st & 3rd Mondays at 10:00 a. m.

Day Shift—

1st & 3rd Tuesdays at 7:30 p. m.

(After First Monday)

Meetings Are Subject to Change

(Union Label) 49

ALBERT LEONARD CONDON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined as testified as follows:

Direct Examination

Q. (By Mr. Harrington): What is your name?

A. Albert Leonard Condon.

Q. And your address?

A. 4172 First Avenue, San Diego.

Q. Are you employed at the Consolidated Aircraft Company? A. Yes, I am.

Q. How long have you been employed by them?

A. One year and 11 months.

Q. What work do you perform?

A. Payroll division of the accounting department.

Q. Have you held any other jobs there?

A. Yes, in the timekeeping department.

Q. When were you in there? For what period of time?

A. For about a year and six months. [30]

Q. Are you a union member?

A. Yes, I am.

Q. When did you join the union?

A. About a year and a half ago.

Q. That is the union involved in this case: Aircraft Lodge No. 1125? A. Yes.

Q. Have you held any position in the union?

A. Committeeman.

Q. When did you hold that position?

A. I was appointed temporary committeeman

(Testimony of Albert Leonard Condon.)

and held that for about four days beginning with about April 24, 1942.

Q. Who appointed you temporary committeeman? A. Mr. Ken Phillips.

Q. What is his title?

A. Business agent.

Q. Of the union? A. For the union.

Q. As union committeeman, what were your duties?

A. Well, to be go between for the personnel in the department and Mr. Shanahan, who is head of the department.

Q. Did you ever take up any grievances while *you acting* as committeeman? A. One.

Q. Who did you take that grievance up with? [31]

A. Mr. Shanahan.

Q. About when did this take place?

A. This was about the 28th of April, 1942.

Q. Where did you take it up?

A. Mr. Shanahan's office.

Q. Who was present there?

A. Just the two of us.

Q. What was the grievance about?

A. Hardman had been asked to transfer from the department. He wanted to be reviewed, receive an increase before he was transferred out of the department.

Q. Did he give any reason why he wanted a review?

A. Yes. He felt the timekeeping department

(Testimony of Albert Leonard Condon.)

had had the benefits of his services for the past year, and he thought they should give him the increase and not the department that he was transferring into, because he would be losing seniority also.

Q. You say you talked this grievance over with Mr. Shanahan? A. Yes, I did.

Q. What occurred during the discussion?

A. Mr. Shanahan stated that he had spoken to Mr. Hardman about it, and that so far as he was concerned, the whole thing was closed, and he asked him if he would accept a grievance, and he said he would, but that he would cancel [32] Mr. Hardman's transfer from the department and recommend to the personnel department that he be terminated immediately.

Q. Was there anything else said?

A. Just as I was about to leave, he said anyone that tried to do anything about the Hardman case was liable to get into trouble.

Q. Did he explain what he meant by getting into trouble? A. No.

Q. And that was the only grievance taken up?

A. Yes, it was.

Q. What department are you working in now?

A. Payroll division, accounting department.

Q. You were transferred, in other words?

A. Yes.

Q. Had you requested a transfer?

A. About two months before, in February.

Q. That was before you were a union committee-man? A. Yes.

(Testimony of Albert Leonard Condon.)

Q. So that had nothing to do with your transfer?

A. Not a thing.

Cross Examination

Q. (By Mr. Riggs): What was the name of the man whom you discussed with Mr. Shanahan?

A. L. D. Hardman.

Q. Mr. Hardman, as I understand it, was going to be [33] transferred to another department and he wanted to have his wage reviewed and come before the semi-annual wage review board before he was transferred?

A. Yes, because he had been told to transfer out of the department.

Q. And you took it up with Mr. Shanahan and Mr. Shanahan said that his mind was made up, he wasn't going to do it, or something like that?

A. He said he had discussed it, and so far as he was concerned, it had been settled.

Q. You, as shop committeeman, were familiar with the agreement with the Lodge No. 1125?

A. To a certain extent, yes.

Q. You knew it provided machinery for grievances?

A. Yes.

Q. You knew all about that, didn't you?

A. Yes.

Q. And that the company had blanks upon which grievances would be prepared, and that it was that each procedure set forth in Paragraph 9 of the Complaint, in which the grievance form was to be filled out and the copy sent to the foreman, one retained by the shop committeeman, and within 24 hours after

(Testimony of Albert Leonard Condon.)

the grievance form was signed, the shop committee-man would meet with the Labor Relations Director, and if they were unable to agree within 48 hours, there was other [34] machinery provided for review. You knew all that? A. Yes.

Q. You didn't do anything about Hardman at all?

A. When I spoke to Hardman about that, he decided not to put in a grievance, under the threat of being terminated.

Q. You told him, Mr. Hardman, he was about to be terminated?

A. Mr. Shanahan told it to me, and I told it to Mr. Hardman.

Q. That's the only occasion you have had to talk to Mr. Shanahan about union matters or union men, is it? A. That's right.

Q. Neither you or Mr. Hardman thought this was important enough to use the technical machinery provided for, with reference to grievances, isn't that so?

Mr. Ryan: Read the question.

(The question was read.)

Mr. Ryan: I object to that.

Trial Examiner Hektoen: Why?

Mr. Ryan: It's a hypothetical question anyway, what he thought about it.

Trial Examiner Hektoen: Read the question again.

(The question was read.)

Trial Examiner Hektoen: I will let him answer that. You didn't, in any event? Is that right?

(Testimony of Albert Leonard Condon.)

The Witness: I did what Mr. Hardman had decided. [35]

Q. (By Mr. Riggs): The fact is that there was no grievance filed by you and none filed by Mr. Hardman? A. That is right.

Q. Mr. Hardman is still in the employ of the company at the same pay? A. Yes.

Q. You are still in the employ of the company at the same pay, transferred to another department of your own accord? A. That is right.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington): When were you transferred from the timekeeping department?

A. I was transferred on the first day of May.

Q. On the first of May? A. Yes.

Q. I believe you said you were appointed temporary committeeman April 24?

A. About that time, yes.

Q. As to the number of grievances you took up, did you take up others besides this grievance?

A. No, that was the only one, the only occasion that ever arose.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: That is all, Mr. Condon. [36]

(Witness excused.)

Trial Examiner Condon: We will have a short recess now.

(Short recess.) [37]

After Recess

Trial Examiner Hektoen: We will be in order, please.

Mr. Harrington: Mr. Williamson.

OLIVER HENRY WILLIAMSON,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) What is your address?

A. I live on Stratford Drive, Encinitas.

Q. Are you an employee of the Consolidated?

A. Yes, sir; I am. However at the present time I am on temporary leave of absence doing some work for the 1125 Lodge here, Aeronautical Mechanics.

Q. That is the union involved in these proceedings?

A. Yes, sir.

Q. When were you first employed by the company?

A. On the 20th of June in 1940.

Q. How long did you work for the company?

A. I worked until about the 18th of April in 1941.

Q. And then what happened?

A. I quit at that time because I had fair assurance from the procurement officer of the Navy that they would take me in the Navy as a warrant machinist. However, they later disapproved my

(Testimony of Oliver Henry Williamson.)

application because I was unable to meet [38] physical requirements.

Q. What did you do then?

A. Then I returned to work at Consolidated on the 18th of September, 1941.

Q. How long did you work for Consolidated?

A. On the 14th of April, 1942.

Q. What happened at that time?

A. On the 14th of April, 1942 I was discharged—fired.

Q. Were you a member of the union?

A. I was.

Q. And are you a member at the present time?

A. Yes, I am.

Q. How long have you been a member of the union?

A. I first joined the union, I think it was in the month of September in 1940.

Q. Did you hold any union position?

A. I was not an officer of the Lodge, but I was elected shop committeeman in my department. I was shop committeeman.

Q. When were you committeeman?

A. I was elected committeeman on the 1st of March. They had a general election in the plant for committeeman in all departments.

Q. And how long were you a committeeman?

A. Oh, I was committeeman for about six weeks.

Trial Examiner Hektoen: The first of March of this year? [39]

The Witness: Yes, sir; 1942.

(Testimony of Oliver Henry Williamson.)

Q. (By Mr. Harrington) Do you know Walter Brown? A. I do, sir.

Q. Is he in the employ of the company?

A. He was until the 14th of April.

Q. Do you know how long he was employed?

A. I think Walter Brown came to work at the plant about the middle of November, 1941.

Q. Where did he work?

A. He worked in Building No. 1, in the jigs and fixtures department on the second shift.

Q. Did you work near Brown?

A. Yes; Brown and I were members of the same gang and under the same foreman.

Q. You say he ceased working on what date?

A. I think it was the 14th of April, 1942. I am quite positive of the date.

Q. Are you acquainted with the circumstances of his leaving his employment?

A. Yes, sir; I am.

Q. Will you relate them to us?

A. Well, it was at the lunch period between 7:30 and 8:00 o'clock on the swing shift, and we were eating our lunch between building No. 1 and building No. 2.

Q. Who were present then? [40]

A. I think Willis Sowers and James Glosson and Walter Brown and myself.

Q. Who were those persons?

A. They were members of our gang. Glosson was my working partner and Sowers also worked in the same gang.

(Testimony of Oliver Henry Williamson.)

Q. And Brown also was employed in your group?

A. Yes, sir; Brown was one of our group, yes.

Q. Proceed.

A. Well, Brown told me that Mr. Hangen had called him up to his office and told him he couldn't work with Dobbs any more.

Q. Who is Hangen?

A. Mr. Hangen—I will clarify that statement. Mr. Hangen was our foreman. He was foreman of the jig builders on the second shift, building No. 1 at that time. Milton Hangen is his first name. There were two foremen on the night shift of the jig and fixture department. Milton Hangen and Richard Strumpf.

Q. Proceed.

A. Well, Brown told me, as committeeman, because it was my duty to know what was going on amongst the members who were employees in the plant, that Mr. Hangen had called him up there and told him he couldn't work with Dobbs any more; that he would have to work with Fred Ewert.

Q. What was Ewert's position? [41]

A. Ewert was a lead man in jigs and fixtures under Hangen on the second shift. And Brown told Hangen that there would be no use of him trying to work for Ewert, that Ewert couldn't talk English plain enough for him to understand him and that it would be impossible for him to understand Ewert's orders or conversations, so if he

(Testimony of Oliver Henry Williamson.)

made it that he had to work for Ewert, why, to write out his time; that he wanted to quit. Hangen told Brown, and this is according to what Brown told me—I am repeating Brown's story, Hangen told Brown that that would be O. K., that he could quit; that he would have him checked out at 11:00 o'clock that night.

Q. What time did the lunch period end?

A. The lunch period ended at 8:00 o'clock.

Q. And what happened after that?

A. Oh, we went back to work and started working on the fixtures we were building and it was somewhere between 30 minutes and 45 minutes and a policeman came up behind Brown and told Brown to pack up his tools, that he was going out.

Q. By "policeman" do you mean a plant policeman?

A. Yes, a plant guard. They say "policeman" on their badges. I don't know their status.

Q. Did you see the policeman come up to Brown?

A. Yes, sir; I did. I was working in such a position about 40 feet away from him that I couldn't help but notice it.

Q. Did you hear the conversation? [42]

A. I couldn't overhear the conversation but I went up to Brown—I dropped my work at that time and I went up to Brown and then I says, "What has happened?" He said, "Well, this policeman come and told me to pack up my tools—that he was taking me out." I says, "Well, didn't

(Testimony of Oliver Henry Williamson.)

you tell me that you had quit?" He said, "Yes." I said, "Well, when people quit they go out with the clerk." I says, "when a policeman comes up behind them and tells them to pack up they are fired." And he says, "Yes," he said that he had been told that he was fired. And I says, "Are you honest with me? Have you told me the truth that you quit and that Hangen agreed to check you out at 11:00 o'clock as quit," and he said, "Yes, that is the truth."

Q. At that time you were union committeeman?

A. Yes, sir; I was.

Q. Did you do anything about that?

A. Yes. I went up to Mr. Hangen's office and I asked the clerk up there, a young lady named Ellen Tullinen, I said, "Miss Tullinen, would you please try to get ahold of Mr. Hangen for me; it is necessary that I see him at once."

Q. Did she do so?

A. She called around to building No. 2 and building No. 3 and the various places where he might have been found and she was unable to get him.

Q. What happened then? [43]

A. Well, I says, "Keep on trying to get him because I want to find out what is happening here; I want Mr. Brown to appear in front of Mr. Hangen and I want them both to tell me what happened so that I will know what went on, whether Brown quit or whether he is being fired."

(Testimony of Oliver Henry Williamson.)

Q. What happened then?

A. Well, she couldn't find him—she continued to try to call him and she couldn't get him and Jim Eastin, a man who was assistant foreman down in the next building, in building No. 2, he come up and he says, "Now, just forget about this. You go on back to work." And I said, "No," I said that it was my duty to find out what was going on and I had seen Ralph Hall run out of there the week before and I had sat idly by and done nothing about it, and I was getting diligent about it, or, negligent, I mean, in my duty as a committeeman for seeing the boys in my department run out without any cause and me not finding out why they were going and if termination slips were such as they were supposed to be.

Q. Mr. Williamson, what happened after you talked to Eastin?

A. Well, I stayed there waiting for Hangen to come and while I was waiting Mr. Hank Legal came out.

Q. What is his position?

A. At that time Mr. Legal was superintendent of the night shift in the parts plant. I believe that was his title. [44]

Q. Did you have any conversation with Mr. Legal?

A. Yes. He came up to me in a very brusque and aggressive manner and he says, "You are one of these damned union agitators." He said, "You

(Testimony of Oliver Henry Williamson.)

better be careful or you will know what I am going to do to you."

Q. Then what happened?

A. I was just about to answer Mr. Legal when a policeman, or a plant guard—maybe I am wrong in the classification, came up—a guard who was never on duty in our building and who I had never seen before, and he motioned, "Come here." He stood a little way away from Legal and myself and he said, "Come here." Legal stepped over to him and I started to step over to him and he said, "Damn you, you get over there—get over there." He says, "Get over," and he said, "Get out of the way." And he gave me a dirty look, a very dirty look, so I stayed a good distance away from Mr. Legal and this policeman and Legal continued to have a conversation for, I would say, somewhere from three to five minutes.

Q. Were you able to overhear the conversation?

A. No, I wasn't. I stayed far enough away so I couldn't. I didn't want to step out of line or do anything to infuriate the plant police.

Q. What happened after that conversation?

A. When he came back I says, "You are wrong about me being an agitator." [45]

Q. Who did you say that to?

A. Mr. Legal. And I says, "I don't want anything to happen here that will bring discredit to my organization." I says, "We can forget the fact that I am a committeeman. I have got another matter that I would like to speak to you

(Testimony of Oliver Henry Williamson.)

about." I says, "I will take off my committee-man's badge and put it in my pocket and go over and ring the time clock out and I would like to have a talk with you in your office in the presence of a representative of the Federal Bureau of Investigation," and I said, "I am willing to do that on my own time."

Q. Did Mr. Legal make any answer to that?

A. Yes. Mr. Legal appeared at that time—it appeared at that time that he and I were going to have a pleasant conversation and he said it wouldn't be necessary for me to ring out my card.

Q. What department were you working in at that time?

A. I was working in Department 65—jigs and fixtures. The number has since been changed to 96.

Q. What happened then after your conversation with Legal?

A. Well, he and I were standing—you see Hangen's office was on top of a tool crib and a little stairway going up to it and Legal and I were standing at the foot of the stairs and we started to walk from the foot of that stairway out to the administration building. We started down the aisle [46] of building No. 1 from column 21-D. That was always our address when we ordered material or anything—21-D. We started to walk from there down the aisle toward the door, and when we got about halfway to the door Mr. Hangen came in and so Hangen saw me walking down with Legal and he says, "What is this?" and *Hangen* says,

(Testimony of Oliver Henry Williamson.)

"This fellow has been raising the devil," and so Hangen says, "Was it about Brown?" and Legal said, "Yes," that it was about Brown. "Well," he says, "That is all over; Brown is fired and gone." He says, "You can just forget about it and go back to work."

Then the next thing that happened was—I said "I still have a little matter that I would like to discuss with the superintendent about the steady advancement of the German born jig builders, the constant lowering of morale and the lowering of production in the department," and I wanted to discuss that matter.

Q. When you say you wanted to talk with the superintendent, to whom do you refer?

A. Mr. Legal, the man who I was with at that time; he says, "Well, we won't need to talk about that." He says, "I don't think you would have anything to talk about." And he says, "By the way," he says, "What are you mad about the Germans in here for?" He said, "I am German. And you are one too, only you haven't got sense enough to know it."

Q. Did you make any remark then? [47]

A. I said, "Well, I still think I have got something to talk about," and he says, "Well, you are just too damned dumb" he says, "You haven't said a smart thing all night." He said, "I wouldn't give you an interview." He says, "You are too ignorant."

(Testimony of Oliver Henry Williamson.)

Q. Anything else occur during that conversation?

A. Yes. He said to Hangen, he says, "You are going to fire him," and Hangen says, "Well, I don't know, he is a good worker," and Legal says, "Go ahead and fire him and I will back you to the limit."

Q. Was there any further conversation?

A. Not between—Legal separated from Mr. Hangen and myself and I went back with Mr. Hangen to his office where he wrote out a termination slip and then he called a guard to escort me from the plant.

Q. Did anything else occur that night with respect to your discharge?

A. No, nothing else occurred that night except that I was given my termination slip which read, "Discharged, agitator," and he escorted me out to the gate with a plant guard.

Mr. Harrington: Will you mark this paper please for identification?

(Thereupon, the document referred to was marked as Board's Exhibit No. 4 for identification.)

Q. Mr. Williamson, I show you a paper marked Board's Ex- [48] hibit No. 4 for identification. Have you seen that paper before? (Handing paper to witness.)

A. Yes, sir; that is the very paper that I carried with me the night they threw me out.

(Testimony of Oliver Henry Williamson.)

Q. That was the paper that was given to you?

A. Yes, sir (Handing paper to Mr. Riggs).

Mr. Riggs: No objection.

Mr. Harrington: I offer Board's Exhibit No. 4 for identification as Board's Exhibit 4.

Trial Examiner Hektoen: Any objection?

Mr. Riggs: No objection.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked as Board's Exhibit No. 4 for identification was received in evidence.)

BOARD'S EXHIBIT No. 4

(Cut)

Consolidated Aircraft Corporation
Lindbergh Field - San Diego, California
Cable "Consair" P. O. Box 1950
Service Record of
Oliver H. Williamson
Signature

C 1989

This will certify that Oliver H. Williamson was in the employ of this Company as shown below:

In	Classification	Out	Reason
6-20-40	Tool Room— Jig Builder	4-18-41	Quit: Going to old job.
9-18-41	Tool Room— Jig Builder	3- 6-42	Class Change
3- 7-42	Tool Room— Jig Builder— Assembly Metal B	4-14-42	Discharged—Agitator

(Testimony of Oliver Henry Williamson.)

CONSOLIDATED AIRCRAFT
CORPORATION

J. H. WATERBURY

Personnel Director

SS# 553-20-6361

hfk

Q. (By Mr. Harrington) Did anything else occur after that night with respect to your discharge?

A. Yes. The next night there was a meeting in Mr. Larimore's office in Plant No. 2.

Q. Who was present at that meeting?

A. (No response.)

Trial Examiner Hektoen: Who is Mr. Larimore?

The Witness: Mr. Larimore was personnel director of Plant No. 2, otherwise called the parts plant.

Well, those present were my business agent, Mr. D. D. Wilkerson, Mr. Roy M. Brown, the Grand Lodge representative, [49] and there was Milton Hangen, my ex-foreman, and there was Jim Eastin and Hank Legal, and Mr. Wiseman, Mr. Herman Wiseman.

Q. (By Mr. Harrington) What was Wiseman's position?

A. Mr. Wiseman—I don't know. He had a title of Public Relations—no, Labor Relations or Per-

(Testimony of Oliver Henry Williamson.)

sonnel Director. Anyway, a job similar to, or maybe in advance of Mr. Larimore's. And then there was Walter Brown and myself.

Q. Is Walter Brown the Brown you referred to as being discharged?

A. Yes. That was Walter Brown, the one I spoke of as telling me he had quit.

Q. The one that you had the conversation with?

A. Yes, sir.

Q. What took place during that meeting in Mr. Larimore's office?

A. At the meeting in Mr. Larimore's office, why, we went over the facts that Walter Brown had told his foreman he wanted to quit and his foreman had agreed to let him quit and it was brought out there that there was a witness who overheard Walter Brown's conversation with his foreman who was willing to testify that Walter Brown had told the truth to me about the matter, and that Mr. Hangen had told a deliberate lie about it.

Q. Who was this witness you referred to? [50]

A. This witness was the clerk whose duty it was to carry on work alongside of Mr. Hangen, who was sitting right next to Mr. Hangen at the time that the conversation went on between Mr. Hangen and Walter Brown.

Q. What was the clerk's name?

A. The clerk's name is the same one that I asked—Tullinen—the same one that I asked to get hold of Mr. Hangen and it transpired that in that meeting that Mr. Wiseman and Mr. Larimore agreed

(Testimony of Oliver Henry Williamson.)

that the company was in error in the dismissal of Walter Brown, and that they took back from Walter Brown the termination slip which read "Discharged, declined to take orders," and furnished him with a service letter saying "Quit."

Q. Did they do that at that meeting?

A. Yes, yes, sir; that was done the next night.

Q. Did you see those service records?

A. Yes, I did.

Mr. Harrington: Will you mark these, please?

(The documents referred to were marked as Board's Exhibits 5-A and 5-B for identification.)

Q. (By Mr. Harrington) I will show you a paper which I have had marked as Board's Exhibit 5-A for identification.

A. Yes, sir.

Q. Have you seen that?

A. Yes, sir; that is right. [51]

Q. Where did you see it?

A. I saw it that night in the office of Mr. Larimore in the Parts Plant. That would be the 15th of April.

Q. I show you a paper I have had marked as Board's Exhibit 5-B for identification.

A. That is right.

Q. Have you seen that before?

A. Yes, sir; that is the transaction that was agreed on at the meeting that was held after the termination of Walter Brown and myself.

(Document handed to Mr. Riggs.)

(Testimony of Oliver Henry Williamson.)

Mr. Riggs: No objection.

Mr. Harrington: I offer Board's Exhibits 5-A for identification and 5-B for identification in evidence as Board's Exhibits 5-A and 5-B.

Trial Examiner Hektoen: That may be admitted.

(The documents heretofore marked as Board's Exhibits 5-A and 5-B for identification, were received in evidence.)

BOARD'S EXHIBIT No. 5-A

(Cut)	(Copy)	No. 16
Consolidated Aircraft Corporation		
Lindbergh Field	San Diego California	
Cable "Consair"	P. O. Box 1950	
Service Record of		

Signature

This will certify that Walter Brown SS #234-03-6132 was in the employ of this Company as shown below:

In	Classification	Out	Reason
11-25-41	Tool Room— Helper General	4-14-42	Discharged—Declined to take orders.

Prospective employers may secure additional information regarding former employees by addressing inquiries to the Personnel Department of this company, provided that they secure the written permission of the individual concerned beforehand.

Official replies will be signed either by executives of Consolidated Aircraft Corporation or authorized members of the Personnel Department. Letters of

(Testimony of Oliver Henry Williamson.)
 recommendation signed by others should be disregarded.

CONSOLIDATED AIRCRAFT
 CORPORATION
 /s/ J. H. WATERBURY
 Personnel Director

BOARD'S EXHIBIT No. 5-B

(Cut)	(Copy)	No. 16
Consolidated Aircraft Corporation		
Lindbergh Field	San Diego California	
Cable "Consair"	P. O. Box 1950	
Service Record of		

 Signature

This will certify that Walter Brown SS#234-03-6132 was in the employ of this Company as shown below:

In	Classification	Out	Reason
11-25-41	Tool Room— Helper General	4-14-42	Quit

Prospective employers may secure additional information regarding former employees by addressing inquiries to the Personnel Department of this company, provided that they secure the written permission of the individual concerned beforehand.

Official replies will be signed either by executives of Consolidated Aircraft Corporation or authorized members of the Personnel Department. Letters of

(Testimony of Oliver Henry Williamson.)

recommendation signed by others should be disregarded.

CONSOLIDATED AIRCRAFT
CORPORATION

/s/ J. H. WATERBURY

Personnel Director

Mr. Harrington: Incidentally, Mr. Examiner, those are copies that were furnished me by the company and we have agreed that they may be received and have the same effect as though they were the originals.

Trial Examiner Hektoen: Does counsel agree with that?

Mr. Riggs: Yes. [52]

Trial Examiner Hektoen: Very good. They may be received.

Mr. Thomas: May I see them?

(Exhibits handed to Mr. Thomas.)

Q (By Mr. Harrington) What else occurred at that meeting?

A. Well, it was suggested by my business agent and the Grand Lodge representative that inasmuch as this had been brought to light that Walter Brown had been handled in an improper manner that I be returned to work and Mr. Wiseman said that he had no objection but he would first have to ask a couple of questions of my foreman, Mr. Hangen.

He asked those questions and in substance here

(Testimony of Oliver Henry Williamson.)

is what they were: If I was a competent jig builder and if I was a good producer and performed my work in a proper manner. Mr. Hangen said, "Yes," that I was a competent jig builder and I was a good producer and it was brought out at that time that not one month before that I had been given a 12 cent an hour merit raise.

He then further asked if it was true that I did organizing on the company's time or that I stepped out of line as a committeeman or was overactive or officious in my duties as a committeeman, and Mr. Hangen said, "No," that that wasn't so. At that time I believe it was Mr. Roy Brown who suggested that as long as that had been brought out that I go to work in the morning, and Mr. Wiseman said that he would have to [53] hold back 24 hours before giving his answer.

Q. Did anything else occur at that meeting?

A. No, I can't recall anything.

Q. Were you reinstated by the company?

A. Yes, I was.

Q. When were you reinstated?

A. I was reinstated either on the 30th of April or the 1st of May.

Q. Were you reinstated to your old position?

A. I was, yes, sir.

Q. Did you suffer any loss of seniority?

A. No. My seniority was held.

Q. You have stated that on your service record the reason given for your dismissal was "Discharged, agitator."

(Testimony of Oliver Henry Williamson.)

A. Yes, sir; that was and when I was sent to the employment office to be re-photographed and re-inducted into the service of the company, they pulled out that service record and made an erasure where it was "Discharged, agitator" and wrote "Disciplinary layoff, no pay."

Q. Did you see the service record?

A. Yes, I did.

Q. At that time? A. Yes, I did.

Mr. Harrington: Will you please mark this, Mr. Reporter? [54]

(The document referred to was marked as Board's Exhibit 6 for identification.)

Q. (By Mr. Harrington) I show you a sheet of paper, Mr. Williamson, that I have had marked as Board's Exhibit 6 for identification. Have you seen this paper before (handing exhibit to the witness)? A. Yes.

Q. Where did you see it?

A. Well, I saw it in two places. I saw it in the employment office where I went to be reinstated, and I saw it again in the office of my general foreman, Mr. R. S. Watt.

Q. This is the paper you have been referring to?

A. Yes, that is it.

Mr. Harrington: Is there any objection?

Mr. Riggs: It is all right.

Mr. Harrington: I offer Board's Exhibit 6 for identification in evidence as Board's Exhibit 6.

This letter, Mr. Examiner, is also a copy of that

(Testimony of Oliver Henry Williamson.)

counsel for the company and I have agreed may be introduced.

Trial Examiner Hektoen: There is no objection, Mr. Riggs?

Mr. Riggs: No objection.

Trial Examiner Hektoen: It may be admitted.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 6 was received in evidence.) [55]

(Testimony of Oliver Henry Williamson.)

BOARD'S EXHIBIT No. 6

Duplicate

EMPLOYMENT RECORD
Consolidated Aircraft Corporation
San Diego, Calif.Name—Oliver Henry Williamson
First Middle Last

Address—2470 San Diego Ave., San Diego Phone Address Phone
 Address—2797 San Diego Ave., N. San Diego, Cal. Phone W-4136 Address Phone
 Address—N.E. Corner Stratford Dr. & Melba St., 6 —Encinitas Address Phone

Date of Birth—12-24-04 Age—35 Date when 65—1969 Height 5'6" Weight 195 lbs. Hair Brown Eyes Brown
 Place of Birth Portland State Oregon Country U.S.A. Nationality American
 Citizen? Yes x No Proof Birth Certificate; born Portland, Oregon Port of Entry Date of Entry
 Date 1st Papers Date 2nd Papers Number Where Issued
 Male x Female Single Married x Widowed Divorced No. Dependent Children Parents
 Other Dependents Wife
 Owns own home Rents x Lives with Parents Lives with other relatives Rooms Room and Board
 How long in this State 18 months In what Counties Los Angeles S.S. 553-20-6361
 Fraternal affiliations Union affiliations
 Church Contract for hire made in State of Calif. Work done in State of Calif.
 Work done in what Dist. S.D. Reg. with Pub. Emp. Office In what District S.D. Certificate No.

EDUCATIONAL HISTORY

Grade Sch. Kerns City Portland State Oregon Graduate Yes
 High Sch. Washington City Portland State Oregon Graduate Yes
 Special Courses University of Oregon Extension Course—Mechanical Engineering
 College City State Graduate
 Special Courses State Graduate
 Trade Sch. City State Graduate
 Special Courses

PREVIOUS EMPLOYMENT HISTORY

Employer	Address	Position	From	To	Rate	Why Left
Melody Music	Longview, Washington	Ser. Mech. Coin Mach.	4-12-36	5-20-40	.75	Wanted start Aircraft
Professional Wrestling			1932	1936		
Harvey S. Bissel	La Crescenta, Calif.	Chief Eng. Yacht	8-4-31	9-5-32	\$175 mo.	Cruise ended
Standard Dredging Co.	San Pedro, Calif.	Dredgeman	4-10-31	8-1-31	.67	Project completed
Bethlehem Ship Building	Terminal Island, Calif.	Machinist	1-15-31	4-5-31	\$.87½	Work ran out
Pacific Bridge Co.	Portland, Oregon	Steam Eng.	7-18-25	9-24-30	\$1.00	Contracts completed
New Libby McNeil & Libby	Wallawalla, Washington	Maint. Mcht.	6-13-41	7-26-41	.80 hr	Seasonal

CONSOLIDATED AIRCRAFT EMPLOYMENT HISTORY

Date Started	Department	Clock No.	Position	Type of Work	Rate	Class	Terminated	Remarks
6-20-40	Tool	6229	Jig Builder	Manual	.65	404143	9-20-40	Rate adjustment
9-21-40	Tool	6229	Jig Builder	Manual	.70	404143	1-3-41	Rate review & clock No. chg.
1-4-41	Tool	15-4180	Jig Builder	Manual	.75	154143	4-18-41	Quit—going to old job M.18
ERB 9-18-41	Tool	15-4554	Jig Builder	Manual	.83V	154143	10-10-41	Trans. to P. P.
IVH 10-11-41	Tool	65-4311	Jig Builder	Manual	.83V	654143	10-24-41	Labor Agreement
B TL 10-25-41	Tool	65-4311	Jig Builder	Manual	.96V	654143	3-6-42	Rate & Class Change
MP 3-7-42	Tool	65-4311	Jig Bldr—Assy Mt B	M	1.08V	653482	4-14-42	Disciplinary Layoff—2 wks without pay Ati
Ati 5-1-42	Tool Room	65-4351	Jig Bldr—Assy Mt. B	M	1.00	653482	5-15-42	Rate Review
5-16-42	Tool Room	65-4351	Jig Bldr—Assy Mt. B	M	1.15	653482		

Supervisor of Personnel

Foreman

Employee's Signature

Duplicate

[Printer's Note]: Matter in italic indicates typing in red ink.

(Testimony of Oliver Henry Williamson.)

Board's Exhibit No. 6—(Continued)

(Reverse Side)

REMARKS

6-19-40 Fingerprints taken
 ReFingerprinted 9-16-41 ERB
 mbp Defense Housing Inquiry 12-29-41
 AG No Loss of Seniority lay-off 4-14-42
 Rephotographed 4-30-1942

Relationship
 to Employer None
 Name of Relatives

Relatives in
 Co. Employ? Yes No x
 Relationship

ELIGIBILITY FOR BENEFITS

Federal Old Age Insurance? Yes No
 Incapable for Benefits—Old Age
 Calif. Unemployment Insurance? Yes No
 Unemployment Reason

Waiting Period

Probationary Period

IN CASE OF ACCIDENT NOTIFY

2797

Name Glenda Thomas Williamson
 Name
 Name
 Group Insurance Yes yes

Address 2470 San Diego Ave.,
 Address San Diego, Calif.
 Address
 Policy No. 44474 26871 Amount \$1000.00

Same

Name Glenda T. Williamson
 Street No. ~~2470 San Diego Avenue~~
 Name ~~2797~~ Route 1
 Street No.
 Name
 Street No.

BENEFICIARY Add'l. \$1,000. 1-12-42
 Relationship Wife
 City San Diego
 Relationship Encinitas
 City
 Relationship
 City
 State

PHYSICAL CONDITION

Right Eye
 Teeth
 Right Ear
 Right Hand
 Right Arm
 Right Limb
 Right Foot
 Right Lung No
 Hernia No
 Hemorrhoids No
 Vaccinations Yes

Left Eye
 Left Ear
 Left Hand
 Left Arm
 Left Limb
 Left Foot
 Left Lung No
 Truss Worn No
 Subject to Fits No

Wears Glasses No

Heart

Varicocele

SERIOUS ILLNESS

None

OPERATIONS

None

COMPENSATION RECORD

Date

Company

Cause

Amount

(Testimony of Oliver Henry Williamson.)

Mr. Harrington: Both sides of this paper I am introducing in evidence.

Trial Examiner Hektoen: Very well.

Q. (By Mr. Harrington): When you were reinstated what shift were you put on?

A. Well, I was put on the day shift.

Q. And what shift had you been on before you were discharged?

A. I had been on the night shift.

Q. Do you know why you were put on the day shift when reinstated?

A. Yes. My general foreman, Mr. R. S. Watt thought that there might be some repercussions from Mr. Hangen about my returning to the shop and he felt that it was for my own best interests to work for Mr. Roland Tyce, who is the foreman or was the foreman in Building No. 1 of the jig builders on the day shift.

I had worked for Mr. Tyce before at other periods for around a year and a half and Mr. Tyce had been well satisfied with my conduct and productive ability and I had a very high personal opinion of Mr. Tyce and we got along very nicely.

I think that Mr. Watt put me on the day shift for my own interests.

Q. You say you think that he put you on for your own interests. Do you know that of your own knowledge?

A. Well, I feel—I feel that the man did it as a move for [56] my own good.

(Testimony of Oliver Henry Williamson.)

Q. When you were put on the day shift do you retain your status as union committeeman?

A. No. The day shift already had a duly elected committeeman and naturally he served, and so there was no place for me to continue as committeeman.

Q. When you were reinstated, did you immediately go right back to work?

A. Well, it took two days to get through the procedure.

Q. What was the procedure?

A. Well, I went first to Mr. Wiseman and he says, "It is all set up for you. You just go back to work." I said, "Should I go home and get my birth certificate—I live out at Encinitas." He said, "No, that won't be necessary." He said, "I will just give you a note to Mr. Pasek, and you go down to the employment office and give this note to Mr. Pasek," and I thanked Mr. Wiseman very kindly for his courteous treatment of me and I went to the employment office and sat there three and a half hours, and finally they called me in and said that they would have to—they couldn't just put me back in; that I would have to go through the procedure of a new-hire, and so when I got through with that, that was a day gone.

Q. What was the procedure of a "new-hire"?

A. Well, you are interviewed. The first thing I went into [57] one of those new-hire interviewers and he sat me down there and started to make out a personnel sheet——

Mr. Riggs: Is this material?

(Testimony of Oliver Henry Williamson.)

Mr. Harrington: Well, it is material but I don't think we have to go into it in such great detail.

The Witness: O. K. Only one point I wanted to bring out.

Q. (By Mr. Harrington) Did you go through the same procedure as a newly hired person?

A. Only except as jig builder "B," he made out the paper as a jig builder "C," and I called his attention to that and he moved me back to "B".

Q. When you were reinstated, were you paid back for the time you were off?

A. No, sir; I was not.

Q. How much time did you lose?

A. 14 working days.

Q. And you didn't receive pay for those 14 days?

A. No, sir.

Q. Do you know where Walter Brown is now?

A. I am not sure, but I have heard he is in the Army.

Mr. Harrington: You may cross examine.

Cross Examination

Q. (By Mr. Riggs) After this meeting that took place on April 15th with the men present that you have spoken of [58] there, were some other meetings held—weren't there other meetings held between Mr. Persons and the head of the industrial relations department of the company and Mr. Roy Brown? A. None of which I attended.

Q. Didn't Mr. Roy Brown tell you after those

(Testimony of Oliver Henry Williamson.)

meetings that he was perfectly satisfied with the outcome of your case? A. No.

Q. What did he tell you?

A. He told me that they were doing the best they could to settle the case and that he thought that I should return to work and then we would continue to pursue the matter until I was paid for the time lost.

Q. Didn't Mr. Wilkerson tell you that they were perfectly satisfied with the outcome of the case?

A. No, sir.

Q. Without any back pay being considered at all? A. No, sir.

Q. Now, this whole row started by Mr. Brown refusing to work under a lead man named F. W. Ewert, didn't it?

A. Yes, sir; that is right.

Q. Didn't he say he wouldn't work for any "Damned Nazi"?

A. I didn't overhear any conversation between Mr. Brown and Mr. Hangen.

Q. All right, but you have given us a lot of conversation [59] that you said Mr. Brown told you. Didn't he tell you that he said that he wouldn't work under any damned Nazi?

A. He told me that he——

Q. Did he say that or not—— Answer that yes or no, can't you?

A. No is the answer. I can give you a statement as close to it, but that ain't the statement that I will make. The statement that I will make might

(Testimony of Oliver Henry Williamson.)

serve you better if you want it word for word, but the answer to your question is no.

Q. What did he say as to the reason why he said he refused to work under Mr. Ewert?

A. He had been unable to understand Mr. Ewert's conversation; that Mr. Ewert didn't speak enough English for him to be able to understand the man.

Q. Well, what kind of a German did he call him?

A. I don't know what kind of a German he called him. What kind of German do we generally call them in this war?

Q. Coming back again, didn't he say, "This Nazi couldn't speak English and he wouldn't work for him?"

A. I will tell you right now you are barking up the wrong tree because Walter Brown never used the word "Nazi".

Q. Didn't he say he wouldn't work under any German that couldn't speak English?

A. He said, "If you are going to force me to work under Mr. Ewert, write out my time—I want to quit." [60]

Q. Because he was a German and he couldn't speak English correctly and he couldn't understand him; is that right?

A. The man still said he wanted to quit.

Trial Examiner Hektoen: Did he say anything further about that?

The Witness: Not in his conversation with me.

Trial Examiner Hektoen: All right.

(Testimony of Oliver Henry Williamson.)

Q. (By Mr. Riggs) He did not tell you that he said that? A. No.

Q. Now, you know it is the rule in the plant that when any employee quits or is terminated that one of the plant police escorts them to the accounting office where their check is made out and their work terminated? A. No.

Q. You know that is correct, do you not?

A. No.

Q. Haven't you seen policemen take the men out who were terminated?

A. When terminated by discharge, yes; where they were terminated by quitting of their own volition they went out with the clerk on at least 1000 instances that I have seen.

Q. Haven't you seen them in plant No. 1 every afternoon take a number of men who were escorted by policemen to the accounting office whose duty it was to see that they are off of the premises? [61]

A. I am busily engaged in my work of building fixtures, and it is not my duty to run around and ask them if they quit or were fired. [62]

Q. Do you mean to say that when a man quits the foreman has the clerk take him down to the accounting office where he is paid off? A. Yes.

Q. Without the intervention of a guard?

A. That is right.

Q. That is your idea of the procedure?

A. I quit once there, you know.

Q. Mr. Eastin, as Brown said, he wouldn't work

(Testimony of Oliver Henry Williamson.)

for Mr. Ewert, no matter what the reason, and told him to turn his tools in, didn't he? A. No.

Q. What did he tell him to do?

A. He said: "This fellow is taking you out."

Q. What fellow did he mean?

A. The policeman who came up.

Q. There was a policeman there with Eastin when you first saw Brown with the two of them?

A. When I first looked up from my work and saw Walter Brown at his bench, Eastin wasn't there, just the policeman alongside Brown.

Q. When you saw the policeman taking Brown out, you got hot under the collar, didn't you?

A. That's right, too.

Q. And when you get hot under the collar you express your- [63] self volubly? You are pretty calm this morning, but when you get hot under the collar, don't you talk faster and louder?

Mr. Ryan: I object.

Mr. Riggs: This whole business is a tempest in a teapot, people losing their tempers.

Trial Examiner Hektoen: Did you lose your temper?

The Witness: I don't believe I did.

Trial Examiner Hektoen: Very well.

Q. (By Mr. Riggs) Did you come up immediately and stop and make a speech?

A. No, sir.

Q. Didn't you say the Axis was controlling this blankety-blank plant and our men were being pushed around enough? A. No.

(Testimony of Oliver Henry Williamson.)

Q. Didn't eight or ten employees hear you making a speech?

A. Eight, nine, ten employees did crowd around, and I told the boys to go back to the benches; that I was serving as a committeeman.

Q. Whatever you told them, there was a little crowd collected when you started to remonstrate about the officer escorting Mr. Brown out?

A. I don't know how you qualify "remonstrate."

Q. I only want the facts. Weren't there eight or nine employees who left their work? [64]

A. Four or five, maybe six, in our gang who worked together, building fixtures, when I went up to see what was wrong. They came over.

Q. Maybe 10? A. All right, take 10.

Q. Maybe 12?

A. You are getting too high.

Q. We will settle with you for approximately 10 gathered around. What did you say about the Axis controlling the plant? And it being full of damned Germans?

A. I didn't say anything about the Axis controlling the plant.

Q. What did you say about too many damned Germans?

A. I wished to discuss that matter with Mr. Legal in the presence of an officer of the Federal Bureau of Investigation.

Q. Didn't you make the statement so that these 10 men heard you say there were too many damned Germans working in the plant? A. No, sir.

(Testimony of Oliver Henry Williamson.)

Q. What did you say about the way the plant was being run and the men being pushed around?

A. My prime interest at that time was to find out whether Walter Brown had told me the truth——

Trial Examiner Hektoen: Read the question. [65]

(The question was read.)

Trial Examiner Hektoen: If anything; answer that.

The Witness: I believe that I told Mr. Jim Eastin that I wanted to see Mr. Hangen about this matter, that our morale was steadily going down.

Q. How was your morale going steadily down?

A. How was it?

Q. Yes.

A. Do you want by that a detailed and specific answer on the different things that happened in the plant that weren't productive? I will give you the best answer.

Q. You mentioned all these things at this time, didn't you? A. What?

Q. You mentioned all these things at this time didn't you?

A. I mentioned only to Eastin that the morale was going down.

Q. Wait a minute. Didn't you say, in various ways the department of jigs and fixtures was under the control of foreign agents, that our good American boys were being gradually pushed out of the picture, and they were taking bread from women and children?

A. No. That's a Hyde Park speech. I told——

Q. Will you stop a minute. [66]

(Testimony of Oliver Henry Williamson.)

The Witness: Then the answer is "No." I am trying to help you. The answer is a plain "no."

Q. (By Mr. Riggs) How long did these remarks of yours take, for you to get them off your chest?

A. I would say somewhere between six and eight seconds.

Q. Not six or eight minutes? A. No.

Q. You didn't speak as long as that?

A. No.

Q. In the six or eight seconds, will you tell us your version of this as to what you said, once more?

A. I told Mr. Eastin that our morale was steadily going down and I never said foreign agents, children, women and children, bread and butter——

Trial Examiner Hektoen: What did you say?

The Witness: I said something that they had pushed around about eight of our good American boys, while the Germans in the plant were constantly getting raised.

Q. (By Mr. Riggs) Now we are getting somewhere; tell us what more you said about it.

A. That's it.

Q. Didn't you say Walter Brown was right when he wouldn't work under any damned Nazi?

A. No, sir. If I had felt that way I would have quit myself that night. I wouldn't have got fired.

[67]

Q. While you were saying these things to Mr. Eastin, Mr. Henry Legal showed up first, didn't he?

A. That is right.

(Testimony of Oliver Henry Williamson.)

Q. Did you go into the same sort of speech with him? Did you repeat what you said to Mr. Eastin to Mr. Legal?

A. I didn't get a chance. Mr. Legal is too fast for me. He jumped me first.

Q. You wanted to tell him about this?

A. I not only wanted to tell Mr. Legal, I wanted to tell the Bureau of Investigation.

Q. In other words, you were highly indignant?

A. Every night when I left the plant they were hollering headlines: "More sabotage in the parts plant; more sabotage in the parts plant."

Q. You say you didn't lose your temper, but you were angry, weren't you?

A. I wasn't pleased.

Q. That's an understatement, isn't it?

A. Not much.

Q. You were pretty hot under the collar?

A. I wasn't one-third as hot as Legal.

Q. Legal was mad too, wasn't he?

A. He was mad; I wasn't mad, I was just displeased.

Q. He was mad and you were just displeased?

A. That is right. [68]

Q. How was Eastin? Was he pleased, mad, or displeased?

A. He beat it. Neither Brown nor I worked one hour for the man. He was only inducted into the situation when Hangen took a duck.

Q. You must have said something to Legal about his being a German and having a German name?

(Testimony of Oliver Henry Williamson.)

A. No.

Q. You testified here a moment ago that Legal got sore when you talked with him later on and said you were through?

A. That is right.

Q. How did he know you said he was a German?

A. He asked me what I wanted to make a complaint about.

Q. Didn't you tell him the same things you said in the presence of eight or ten men around you?

A. I said production and morale in our department was suddenly falling down, and I wanted to talk with him before a member of the Federal Bureau of Investigation, and he says to me: "What about the Germans? I am a German. You are one of us, but you haven't got sense enough to know it."

Q. He says, "I am a German." What did you say then?

A. When he said he was a German?

Q. Yes.

A. I didn't have to say anything. That was only half his statement. I says: "No, I am not a German."

Q. What—— [69]

A. You asked me a question and changed it before I got the answer out.

Q. Didn't you say a great deal more during the six or seven seconds before you were talking to Mr. Eastin, because it takes you a long time to talk?

Trial Examiner Hektoen: Isn't Mr. Eastin gone by this time?

(Testimony of Oliver Henry Williamson.)

Mr. Riggs: Mr. Eastin is gone.

Trial Examiner Hektoen: Then let us go on to Mr. Legal.

Q. (By Mr. Riggs): Wasn't Legal pretty mad when you told him about the Federal Bureau of Investigation and the Germans in the plant, he being German, and one of the foremen in the plant?

A. I imagine he was mad.

Q. And you were still displeased, I take it?

A. No. I thought that I was on my way to his office to have a calm and rational discussion of the situation, and I was quite happy about it by that time.

Q. There was nothing said about the union all the way through this conversation at all?

A. Only first, when Legal first butted into me, on his first abrupt approach, was the only time.

Q. What did he say then?

A. I better be careful or I know what he would do to me.

Q. Didn't he say that you were a union agitator making a [70] speech in the plant, and that you had to quit that?

A. No. In the meeting, before Mr. Larimore and Mr. Wiseman, he admitted that he had never seen or heard me causing a disturbance; that the story came to him second-hand.

Q. Who was it told you you ought to be ashamed of yourself, as a shop committeeman, wearing a badge, and making a speech like that in the plant?

(Testimony of Oliver Henry Williamson.)

Mr. Ryan: I object to the question. There is no such testimony.

Trial Examiner Hektoen: Sustained.

Q. (By Mr. Riggs): Did anyone tell you?

A. There was an objection and it was sustained. Am I supposed to answer?

Trial Examiner Hektoen: Did anybody tell you that? You can answer that question.

Read the question.

(The record was read.)

Trial Examiner Hektoen: Did anybody say that to you?

The Witness: No, sir.

Q. (By Mr. Riggs): Why did you take off your shop committee badge?

A. Because production was continuing to fall down and down, and I had seen eight good American boys with Anglo-Saxon names run out of the plant, one after another, while I sat in wage review as a committeeman, and saw every man with a [71] German name recommended for top money, and all the talk and propaganda in the newspapers as to the falling off of production in the Consolidated plant was the fault of the union, and I thought, "ye gods. Here comes a guy that is going to pin this drop in production on our organization."

That's why I took it off.

Q. It was entirely your own suggestion that you take it off? A. Yes.

Q. Have you ever done that before, in talking with any company officials?

(Testimony of Oliver Henry Williamson.)

A. I had only been a company man for six weeks.

Q. It was unusual for you to take off your badge when you talked on union affairs?

A. At the same time I took off my badge I asked him for a conference with him in his office. I further asked that I be allowed to punch out my time clock card and do it on my own time. I said the matter I was going to discuss with him was a matter of business other than the union, and we were circularized, and it was published in the Consolidated News, that we were supposed to bring those instances to light. I was following the dictates put out by management itself, that such a thing should be done.

Q. Who was it that finally discharged you? Hangen or Legal?

A. Hangen wrote the termination slip out, but he seemed to [72] want Legal to do it.

Q. Legal was the man who fired you?

A. Legal says: "Go ahead and fire him. I will back you to the limit."

Q. The next thing you heard of this row was the next night when this conference took place?

A. That is right; yes, sir.

Q. Did you say much at the meeting?

A. No. It was a great deal like between you and I, questions and answers.

Q. Mr. Brown and Mr. Wilkerson did most of the talking for you?

A. They were my representatives.

(Testimony of Oliver Henry Williamson.)

Q. Didn't they say this was a row where everybody lost his temper, and it was a tempest in a teapot, and you ought to go back to work?

A. I don't recall any such conversation.

Q. Didn't they say that in substance?

A. You are right, in substance.

Q. Didn't they say the whole thing was a row in which everybody had lost his temper, and it was a trivial affair anyway?

A. That question could be answered by calling on Mr. Brown and Mr. Wilkerson.

Mr. Riggs: I am perfectly willing to call Mr. Brown and [73] Mr. Wilkerson.

Trial Examiner Hektoen: Do you remember anyone saying that, or anything like that?

The Witness: No, I don't. I don't say it wasn't said.

Trial Examiner Hektoen: All right.

Q. (By Mr. Riggs): Did Mr. Wiseman — and who represented the company?

A. Mr. Wiseman and Mr. Larimore.

Q. Did Mr. Wiseman or Mr. Larimore say something to that effect?

A. I don't recall.

Q. Anyway, you went back to the company's employ with the loss of two weeks of disciplinary lay-off?

A. That is right.

Q. Outside of that you still have the same pay and are working for the company on another shift, which you think Mr. Tice put you on for your own benefit?

(Testimony of Oliver Henry Williamson.)

A. That is true, sure.

Q. And what is your grievance now?

A. I want that stricken from the record: Disciplinary lay-off, because I don't feel any discipline was justified, inasmuch as I was acting as committeeman and I want the approximately \$129.00 due for time lost.

Q. Did you file a grievance with reference to the disciplinary lay-off? [74]

A. I have had nothing to do with this case whatsoever. It has been handled by my representatives, the Aeronautical Lodge.

Q. You know the Aeronautical Lodge did not file a grievance with reference to the disciplinary lay-off of two weeks pay, don't you?

A. I am not familiar with their filings.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything more, Mr. Harrington?

Redirect Examination

Q. (By Mr. Harrington): Were you present at those meetings between Brown and Persons after April 15?

A. No, sir.

Q. Did Brown's reason for refusing to work for Ewert have anything to do with your taking up his case?

A. No, I was uninterested in the matter that the man was being given a termination slip different from the stated reason of his leaving. In other words, he stated he wanted to quit, and his foreman

(Testimony of Oliver Henry Williamson.)

told him he could quit. That boy was leaving the plant of his own will and desire, and was going to go out and ask for employment from some other employer.

Trial Examiner Hektoen: I think that is all that is necessary on that.

Mr. Harrington: That has been covered, yes.

Q. (By Mr. Harrington): You stated a little crowd collected [75] when you were talking to Eastin and you told them to go back to work?

A. That is right.

Q. Did the crowd stay around while you talked to Eastin?

A. No. I told them to go back to their benches.

Q. Did you take off your badge and punch the time clock when you talked to Mr. Legal?

A. I did remove my badge, but Mr. Legal assured me it wasn't necessary to punch the time clock.

Q. And you say you didn't receive pay for time off?

A. No, sir.

Recross Examination

Q. (By Mr. Riggs): All these records put in evidence about the change in your status were always as a result of conferences between Mr. Persons and Mr. Roy Brown, by which you were reinstated?

A. I wasn't present at any conferences; I don't know; what was agreed between them was agreed between them.

(Testimony of Oliver Henry Williamson.)

Mr. Riggs: Nothing further.

Trial Examiner Hektoen: You are excused, Mr. Williamson.

(Witness excused.)

Trial Examiner Hektoen: We will be in adjournment until 2:00 o'clock.

(Whereupon, at 12:30 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same day.) [76]

After Recess

(The hearing was reconvened at 2:00 o'clock p. m.)

Trial Examiner Hektoen: The hearing will be in order.

Mr. Harrington: Mr. Phillips.

KENNETH G. PHILLIPS,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington): What is your name?

A. Kenneth G. Phillips.

Q. What is your address?

A. 1442 Tyler Street, San Diego.

Q. Are you employed by the company?

A. No, I am not employed by the company now. I am on a leave of absence.

(Testimony of Kenneth G. Phillips.)

Q. Are you a member of the union?

A. Yes, sir.

Q. Since when have you been a member?

A. Been a member of the union since the latter part of 1940.

Q. Do you hold any official position in the union?

A. Yes. I am the business agent for the union.

Q. How long have you been business agent?

A. Since the first of the year. [77]

Q. The first of this year?

A. This year, yes.

Q. As business agent of the union what are your duties?

A. Well, my duties are negotiating with the management relative to the business of the lodge and taking up specific grievances with the company relative to the grievances of the men and the lodge as a whole.

Q. Do you take up cases of discharge of employees by the company in your official capacity?

A. Yes; that would be one of my duties.

Q. What cases have you taken up?

A. Well, the first two cases that I had an opportunity to take up after coming into office, were the cases of A. B. Mergen and A. J. Fisher.

Q. When were those men discharged?

A. To the best of my recollection Mr. Mergen was discharged first on December 20, 1941, and Mr. Fisher was discharged January 1, I believe, of this year.

Mr. Harrington: I might state here, Mr. Exam-

(Testimony of Kenneth G. Phillips.)

iner, and Mr. Counsel, we are not alleging the discharge of Mergen as a violation of 8(3) of the Act.

Q. (By Mr. Harrington) When did you take up the discharge of Fisher?

A. The discharge of Fisher we took up with the management——

Q. By “we” whom do you mean? [78]

A. I mean Mr. R. B. Felton who was the district business representative who was working for the local at that time and we took the case of Mr. Fisher up, to the best of my recollection, on the 8th of January of this year.

Q. And who did you take it up with?

A. That was taken up with Mr. Larimore, the personnel director of the Parts Plant of Consolidated.

Q. Who was present when you took it up with Mr. Larimore?

A. Mr. Larimore and Mr.—well, Mr. Felton and myself, of course. He referred us then to Mr. Newman, the factory superintendent.

Q. Did you see Newman?

A. Yes. We went in and we had a conversation with Mr. Newman.

Q. Who is “we”? You and Felton?

A. Mr. Felton and myself.

Q. What happened in that conversation?

A. Well, really the conversation was very short.

Q. Well, what happened?

A. (No response).

(Testimony of Kenneth G. Phillips.)

Mr. Riggs: May I interpose an objection? It seems to me that the order of proof should be that you give the circumstances of the discharge of Mr. Fisher and the negotiations subsequent to his discharge with the company, the company having taken the position that they would not reinstate him [79] is immaterial.

Mr. Harrington: Well, Mr. Riggs, I intend to put Mr. Fisher on tomorrow. I have been unable to get him today. I understand he is working some place in town. I don't know just where, but I intend to put him on tomorrow morning. I was putting this witness on out of turn inasmuch as I have been unable to get ahold of Mr. Fisher, but we are not going into the circumstances of the discharge here. I am going into them tomorrow with Fisher and I didn't intend to preclude you from any sort of defense or anything of that nature.

Trial Examiner Hektoen: Is that all right, Mr. Riggs?

Mr. Riggs: Well, I still think it is immaterial, the conversation they had with the management.

Mr. Harrington: This is a representative of the union who was taking up a grievance with a representative of the company.

Trial Examiner Hektoen: If that is the objection it will be overruled. Go ahead.

Q. (By Mr. Harrington) We were discussing the conversation that you and Felton had with Newman. A. Yes.

(Testimony of Kenneth G. Phillips.)

Q. What occurred in that conversation?

A. In the conversation with Mr. Newman Mr. Felton and I both spoke relative to Mr. Fisher's discharge and stated the [80] Union's position, that we felt the discharge was unwarranted.

Q. Did Mr. Newman make any reply to that?

A. Mr. Newman's reply was that in his opinion and in the opinion of the management of Consolidated, Mr. Fisher was his own worst enemy and that the company felt they were justified in his discharge and that they would under no circumstances consider Mr. Fisher for to be taken back into the employ of the company. [81]

Q. Did you take up Fisher's case with any other officials of the company?

A. Yes. We took up Mr. Fisher's case with Mr. Wiseman.

Q. Who took it up?

A. At that time Mr. R. B. Felton and Mr. L. A. Perry and myself were in Mr. Wiseman's office in the home plant.

Q. When was this? Can you place the date?

A. That was some time afterwards; I imagine it was, well, approximately the 18th or the 20th of the month; right around there.

Q. What took place during that conversation?

A. During that conversation Mr. Wiseman was very adamant in his stand as to the company's position.

Q. What did he say?

(Testimony of Kenneth G. Phillips.)

A. He stated the company still felt they were justified in Mr. Fisher's discharge, and that the company's position would not change and they did not intend to change their position. He would not be rehired.

Q. I believe you also took up Mergen's case with the company? A. Yes.

Q. When?

A. When I first contacted Mr. Mergan, it was on the day of his discharge, December 20. I was working at the plant at the time. I had been elected to my position as business representative of the local; however, I wasn't to take office [82] until the first, and I was still in the plant. I ran across Mr. Mergan in the yard, and I accompanied him into Mr. Larimore's office, and I asked Mr. Larimore if there was any objection to my sitting in on the hearing and having a word to say on Mr. Mergan's behalf. They stated no.

I had a word with Mr. O'Connell, shop committee, and I believe Mr. Harkins, another committee-man, I think shop foreman for the plant was there, plus Mr. Eckdoll, foreman of Mr. Mergan's department, Mr. Larimore, and Mr. Mergan, of course.

Q. What happened?

A. At that time we discussed Mr. Mergan's case and we tried to effect for Mr. Mergan a transfer in another department in place of an outright discharge, and they would not reconsider his case, and terminated him from the plant that day.

(Testimony of Kenneth G. Phillips.)

Q. Did you take up his case with the company at any time thereafter? A. Yes.

Q. When?

Mr. Riggs: I object to the question as immaterial, inasmuch as Mr. Harrington states the discharge of Mr. Mergan is not before the Examiner for consideration under any phase of the complaint.

Mr. Harrington: His discharge has not been alleged as a [83] violation of the Act, but what I am going into is what efforts the union took thereafter to take his case up for consideration by the company, and there is a procedure in the contract for taking up grievances.

Trial Examiner Hektoen: What are you going to do with it?

Mr. Harrington: We are alleging the company refused to consider Mergan's case and discuss it with the union as bargaining agent for the individual.

Trial Examiner Hektoen: It is part of your case of refusal to bargain?

Mr. Harrington: Yes.

Trial Examiner Hektoen: In that event, what do you think?

Mr. Riggs: It seems to me the testimony shows they did bargain, and it will be elucidated hereafter that not only did they have several discussions about Mr. Mergan, but there was the matter of attempted conciliation with Mr. Walsh from Los Angeles, who came down here.

Trial Examiner Hektoen: We do not have all

(Testimony of Kenneth G. Phillips.)

that as yet. On his explanation you may go ahead, Mr. Harrington.

Q. (By Mr. Harrington) When did you take up Mergan's case again with the company?

A. Mergan's case again was taken up with Mr. Wiseman, and I think Mr. Felton and I took it up with Mr. Wiseman in his office. [84]

Q. What occurred at that meeting?

A. Well, at that meeting he stated the company's position was still the same, and there wasn't any long drawn out discussion on it. The company's position was very adamant and very strong. They would not discuss it too lengthily. They had their position and would not change it.

Q. Did you attempt to take up either Fisher's or Mergan's case any further?

A. No, I did not. We felt, with the company's position being so very strong, and whereas they wouldn't discuss it to any great length, it was futile to attempt to take it up any further.

Q. At that time did the contract provide for arbitration?

A. Yes, there was an arbitration clause in the contract.

Q. Did you attempt to invoke that clause?

A. No. We further felt that there was no use to try to arbitrate the matter where the company's position was so one-sided.

Q. Does your contract between the company and the union provide for a review of wage rates for the employees? A. Yes.

(Testimony of Kenneth G. Phillips.)

Q. Does it provide individual increases?

A. Yes.

Q. What provision of the contract is that?

A. That is Section 3 of the union agreement. [85]

Q. What does that provide, can you state?

Trial Examiner Hektoen: We have it in evidence.

Mr. Harrington: All right.

Q. (By Mr. Harrington) Was that the method of granting interim wage increases by the company, if you know?

A. The method of granting interim merit increases at that time was not being followed by the company.

Q. What called to your attention the fact that it was not being followed?

A. Prior to my taking office, and many times afterwards; but I had no opportunity to do anything about it, or take it up with the company.

Q. I believe you stated you became business agent in January of this year? A. Yes.

Q. After becoming business agent did you attend a conference with the company?

A. Yes. We attended one specific conference on January 7.

Q. Was this matter taken up at that time?

A. Yes, that matter was taken up at great length.

Q. Who was present at that conference?

A. For the union there was Mr. Roy Brown, the Lodge representative, Mr. N. R. Pyatt, Mr. R.

(Testimony of Kenneth G. Phillips.)

B. Felton, Mr. W. J. Chudleigh; I believe also there was Mr. Wilkerson, Mr. L. A. Perry, Mr. [86] J. E. Bruce, and myself.

Q. What occurred at that meeting?

A. At that meeting——

Q. With respect to these interim increases.

A. We discussed it with the plant management, Mr. Woodhead, and Mr. Laddin, Mr. Fleet, Mr. Bowers, and Mr. Wiseman.

Q. Who is Mr. Woodhead?

A. Mr. Woodhead is president of Consolidated.

Q. And Mr. Laddin?

A. Production manager, I think; I am not sure.

Mr. Riggs: Vice president and general manager.

Mr. Harrington: Thank you, Mr. Riggs.

Q. (By Mr. Harrington) What were the other names you mention? Mr. Laddin?

A. Mr. Laddin, vice president and general manager, Mr. Wiseman.

Q. I think we have Mr. Wiseman identified.

A. Mr. Bowers, Mr. Fleet, Mr. Wiseman at that meeting, delegated by the company as the labor relations committee with which we were to do business.

Trial Examiner Hektoen: Which Mr. Fleet?

The Witness: Dave Fleet.

Trial Examiner Hektoen: Is that the son of Major Fleet?

The Witness: Yes. [87]

(Testimony of Kenneth G. Phillips.)

Trial Examiner Hektoen: What is his position?

The Witness: Now——

Q. (By Mr. Harrington) At that time?

A. At that time the company had designated these three gentlemen, Fleet, Bowers and Wiseman as the labor relations committee with which we were to do business. The union was to take all their problems to them.

We took up, in the presence of all these gentlemen, the fact that the interim merit increases were not being granted under the procedure as set up in the union agreement. Mr. Roy Brown brought that to their attention and they stated the condition would be corrected.

Q. How did they state the condition would be corrected?

A. They stated they would put out a memorandum to the foremen in the departments, that the interim merit increases would have to be signed by the union committeemen before being put into effect.

Q. Did anything else occur after that conference with respect to these interim increases?

A. Yes; it was brought to my attention that the interim increases were not being presented to the union committeemen for their signature prior to putting them into effect.

Q. Who brought it to your attention?

A. It was brought to my attention by many of the committeemen in the departments, from the de-

(Testimony of Kenneth G. Phillips.)

partments they [88] represented, and primarily by the shop foreman, Mr. M. J. Torreys.

Q. As a result of that information did you take any steps?

A. Yes, I did. We took that up in general conference in the Union Hall, and Mr. W. J. Chudleigh called the management and asked through a telephone conversation for a meeting.

Q. Who of the management did he call? Do you know?

A. I think he called Mr. Dave Fleet. I couldn't be positive on that.

Q. Was such a meeting held?

A. Yes, we had a meeting that afternoon with Mr. Chuck Leigh.

Q. Who is he?

A. Mr. Leigh's title I don't know.

Mr. Riggs: He is vice president of the company, assistant general manager.

Q. Thank you, Mr. Riggs.

What took place at that meeting?

A. At that meeting we stated the company was not following out the clause in the parent union agreement relative to going to the committeeman prior to granting interim merit increases.

Q. What else occurred at that meeting?

A. Well, at that meeting the general committee we sent down formulated a new memorandum to be sent out to the union [89] foremen in the departments stating they would have to contact the committeemen prior to granting these increases.

(Testimony of Kenneth C. Phillips.)

Mr. Harrington: Will you mark this as Board's next exhibit in order?

(The document referred to was marked as Board's Exhibit No. 7 for identification.)

Q. (By Mr. Harrington) Mr. Phillips, I show you a paper I have had marked Board's Exhibit 7 for identification. Have you seen that paper before?

A. Yes; that's the memorandum that we drew up in his office, Mr. Leigh's office.

Mr. Harrington: I offer Board's Exhibit No. 7 for identification in evidence as Board's Exhibit 7.

Trial Examiner Hektoen: Without objection, I take it?

Mr. Riggs: Yes.

Trial Examiner Hektoen: All right.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 7 was received in evidence.)

BOARD'S EXHIBIT No. 7

(Copy)

Consolidated Aircraft Corporation
San Diego, California

January 22, 1942

Memo to: All Department Heads

Subject: Policy with regard to Interim Wage Increases

I have been informed that the Union has interpreted my memo of 11 November 1941 on the above

(Testimony of Kenneth G. Phillips.)

subject as a violation of that portion of Section 3 of the Union Agreement which reads as follows:

“In accordance with past practice, the Company will approve interim individual increases when justified, after consulting the Foreman and the Union Committeeman of the Department concerned.”

It is this Company's policy to comply fully with all provisions of the Union contract. If a Foreman or Department Head feels that an employee merits an increase before the next wage review period, such increase will be approved providing the new rate falls within the approved rate range for the job. Rate ranges for the various jobs have been, or will be, established under the jurisdiction of the Wage and Salary Committee.

I. M. LADDON

Vice President and General
Manager

Q. (By Mr. Harrington) Did the issuance of this memorandum change conditions?

A. No; there are many cases that came to my attention after that where the foremen in the department were granting increases without consulting the committeemen prior to the granting those increases.

Q. Who called this to your attention? [90]

A. Well, one specific instance was called to my attention by Mr. W. D. Lewis, who was committee-

(Testimony of Kenneth G. Phillips.)

man in the purchasing department. Mr. Lewis brought to me memorandums that were sent out from Mr. Herman Wiseman to the department head, Mr. E. Stewart, and on these were listed and itemized names of the individuals involved in increases, and the amount of the increases, and effective date as shown on that, prior to even showing them to the committeemen for their signature.

Q. Did you do anything about those?

A. We discussed those, and as I say, Mr. W. B. Lewis and myself discussed it with Mr. Herman Wiseman in his office.

Mr. Harrington: Will you mark these, please?

(The documents referred to were marked Board's Exhibits Nos. 8-A through 8-E, inclusive, for identification.)

Q. (By Mr. Harrington) I show you papers marked Board's Exhibit 8-A to 8-E for identification. Have you seen those papers before?

A. There are a lot of names here. I am sure they are.

Mr. Harrington: I offer Board's Exhibits 8-A to 8-E inclusive, in evidence, as Board's Exhibits 8-A to 8-E.

Mr. Riggs: I would like to ask the witness two or three questions about those.

Trial Examiner Hektoen: Very well. [91]

Cross Examination

Q. (By Mr. Riggs) Just one more question. These are memorandums, one dated—one memor-

(Testimony of Kenneth G. Phillips.)

andum dated February 3rd with reference to E. T. Stewart, with reference to rate increases of certain men, and at the bottom of them it says, "We enclose a duplicate copy in order that you may advise the shop committeeman." Have you noticed that, Mr. Phillips? A. Yes, I did.

Q. Can you swear that none of the shop committeemen had been consulted about these men before this increase was made, of your own knowledge?

A. Of my own knowledge I know that Mr. W. D. Lewis was not consulted on any of those names prior. If there were any committeemen——

Q. What department was he in?

A. He was in Department 8.

Q. Purchasing department?

A. Purchasing department, yes.

Q. And he told you that he had not been consulted? A. That is right.

Q. Do you know the purpose of the company writing at the bottom of these rate increases: "We enclose a duplicate copy in order that you may advise the shop committeeman."

A. Do you want me to answer that in my own words?

Q. Yes. [92]

A. All right. The shop committeeman is not to be given a copy of these after they have been granted; he is to be shown those prior to them being O.K'd.

Q. Don't you know the purpose of giving him

(Testimony of Kenneth G. Phillips.)

these lists by a duplicate copy, was to let him have a list of what he previously agreed to so there would be no question about it?

A. No, I don't know that. I don't believe that.

Q. You don't know that of your own knowledge?

A. I don't believe that is true. As a matter of fact I know it isn't true in this particular case.

Q. Well, why would the company say: "We enclose a duplicate copy in order that you can advise the shop committeeman", and give it to the shop committeeman unless that was the purpose, to confirm in his own mind what he had previously agreed to?

A. According to the current union agreement and—according to the current union agreement the committeeman is to be contacted prior to granting the increases, before any memo is made out, which was not done.

Q. Well, don't you know there have been a lot of cases in the plant where committeemen had claimed that they had not been contacted and the foreman had claimed that they had been?

A. Well, I am not interested in that. All I am interested in is this particular question.

Q. Answer my question. Don't you know there were a number [93] of such instances?

A. No, I don't.

Q. You have never heard of any such instances?

A. None have been called to my attention, no.

Q. Now, with reference to the memorandum of February 19th, with reference to a rate increase

(Testimony of Kenneth G. Phillips.)

for a man named Davin, which had thereon: "We enclose a duplicate copy in order you may advise the shop committeeman"—do you know who the shop committeeman was?

A. No, I don't know all those names—who the committeemen were.

Q. Let us give the Examiner an idea of the magnitude of the operations of this company and the shop committeemen. If you know how many there are now.

A. No, I only handle my own. I know how many I have.

Q. Don't you know there are over 270 shop committeemen in the plant now, and over 125 stewards?

A. I presume that is about the ratio.

Q. Well, is it your idea that the foreman must seek out the shop committeemen with reference to an interim raise of any individual for merit instead of committeemen seeking him out?

A. It is not only my idea but it is definitely a part of the agreement, he must, yes.

Q. And he must secure his approval?

A. Absolutely. [94]

Q. And he must not only consult with him but secure his approval? A. Absolutely.

Q. And can you swear that that was not done in the case of this man Davin in the purchasing department?

A. I can't swear to any one particular name because this Mr. Lewis was the committeeman for Davin and, incidentally, some of these at the time

(Testimony of Kenneth G. Phillips.)

Mr. Lewis had checked off some of these, at the time he stated he had been contacted on them, I think there were two or three, so I would be in a poor position to swear on any one case.

Q. Well, these are all with reference—in connection with February 12. This was with reference to four people in the purchasing department with the same foreman and the same statement thereon, that a duplicate copy is enclosed in order that you may advise the shop committeeman, and do you know of your own knowledge whether the shop committeeman had been consulted about those four?

A. I am taking merely the word of Mr. W. D. Lewis.

Q. And you don't know anything about this yourself?

A. I didn't check it. We took that up with Mr. Wiseman and Mr. Wiseman confirmed it, and I presumed that he was in a position to know better than I.

Q. Would your answer be the same with reference to this one of January 30th? [95]

A. My answer would be the same on all of those.

Q. That all you know is what Mr. Lewis told you?

A. Not only what Mr. Lewis told me, but what Mr. Wiseman, the company's officer, stated also was a fact.

Q. Didn't Mr. Wiseman tell you a duplicate

(Testimony of Kenneth G. Phillips.)

copy was furnished to the foremen to give to the committeemen so as to confirm what had already been arranged with the committeemen?

A. Mr. Wiseman at that time stated that it was being handled improperly and that he would correct it in the future.

Q. But so far as these individuals are concerned, all you know is what Mr. Lewis told you about it?

A. No; what Mr. Wiseman also confirmed at that time, and Mr. Lewis.

Q. Did you talk to him about these specific cases?

A. Why yes, we did. We had those in with us.

Mr. Riggs: I object to this as not being sufficiently proven.

Trial Examiner Hektoen: May I see them?

(Exhibits handed to Trial Examiner.)

Trial Examiner Hektoen: What is Wiseman's title again?

The Witness: His title—he is no longer with the company, but his title at that time was Labor Relations Director, I believe.

Trial Examiner Hektoen: What are these offered for, Mr. Harrington? [96]

Mr. Harrington: They are offered as evidence showing Wiseman—showing that these individual interim increases had been granted without consulting the union committeemen.

Trial Examiner Hektoen: It doesn't seem to me they prove anything about not consulting the union

(Testimony of Kenneth G. Phillips.)

committeemen. Standing alone they simply say that such and such happened and unless Mr. Phillips knows of his own knowledge——

Mr. Harrington: They tend to complete the picture.

Trial Examiner Hektoen: They tend to complete the picture but just at this point they don't seem to prove anything.

Mr. Harrington: Well, I will withdraw my offer then for the time being.

Trial Examiner Hektoen: Very good.

Redirect Examination

Q. (By Mr. Harrington) You have testified that you and Committeeman Lewis discussed increases with Wiseman. What did Wiseman do at the time?

A. Mr. Wiseman stated that he would notify Mr. Ed Stewart that in the future the committee was to be contacted prior to actually granting the increase and he was not to be shown a copy, such as these copies here are, which state that the committeeman is to be given those copies after the company has already O.K'd the increases and put in the effective date, and that that would be done throughout the shop.

Q. Did anything else occur with respect to those increases? [97]

A. Yes; the following day——

Q. What day was that?

A. That was sometime in the first part of March. I don't know the exact date. There were 365 or

(Testimony of Kenneth G. Phillips.)

385 increases in the inspection department, which increases had been granted without consulting the union committeeman.

Q. Was anything done about those increases?

A. Yes. We were in a meeting with the conciliator, Mr. Harry Malcomb and Mr. Roy Brown presented those to Mr. David Fleet, the chairman of the company's panel of that committee, and showed him the evidence that these increases had been put into effect or were to be put into effect and that individual slips had been given to the men stating that effective at a certain date, which was, I believe, the 4th of the month, that they would be given certain specific increases, and we haven't any knowledge of it.

Mr. Freeman, the union committeeman, had brought those in to me.

Q. Did anything else occur at that meeting with respect to these?

A. Well, in respect to these, yes. Mr. David Fleet stated that after checking that the increases were not properly granted, and further stated that the increases would not be put into effect, and at that time we stated that inasmuch as the company had already done all of the harm that it was possible to do by granting these increases unjustly—that [98] is not in conformity with the union agreement, and also given slips to the men regardless, didn't make any difference to us whether they put them into effect or not.

(Testimony of Kenneth G. Phillips.)

Q. Did you participate in the wage review of April, 1941? A. Yes, I did.

Q. What is the wage review, Mr. Phillips?

A. Well, the wage review was where each individual after six months continuous service with the company is reviewed upon his merits and ability on the job he is performing, to the amount of increase he is to be given.

Q. During that wage review in April, 1941, was a minimum rate of pay established for crane operators?

A. At that time there were various rates of pay for crane operators, and we did establish a minimum rate of pay for all crane operators of 75 cents per hour.

Q. Have any increases been granted since that time?

A. Well, since that time there have been merit increases of 5 cents at one time and 13 cents at another time.

Q. Have those increases been general and by "general" I mean have they covered all the employees?

A. They have covered all the employees in the department, yes—in all departments.

Q. Did these overhead crane operators receive those increases?

A. Yes. The overhead crane operators received their in- [99] creases along with the others.

Q. Have men hired since received those increases?

(Testimony of Kenneth G. Phillips.)

A. No. The men hired subsequent to that time, or after that time, were not, of course, given the merit increases of 5 and 13 cents.

Q. Has the union discussed that matter with the company?

A. Yes, we did. We discussed that.

Q. When?

A. With the company. That was in the Parts Plant sometime I believe in the month of February—in the first part of February, in general conferences we had.

Trial Examiner Hektoen: I am sorry, but I don't understand this. This wage review took place in 1942?

Mr. Harrington: 1941 is the date.

Trial Examiner Hektoen: And you are speaking now of 1942?

The Witness: Yes.

Q. (By Mr. Harrington) And who was present at those conferences?

A. Well, for the company, the Labor Relations Committee, Mr. Wiseman, Mr. Bowers and Mr. Fleet. For the union Mr. Roy Brown, Mr. Wilkerson and Mr. Perry and Mr. Bruce and myself.

Mr. Riggs: What was the date of that, Mr. Phillips?

The Witness: That was, I believe, in the first part [100] of February.

Mr. Riggs: This year?

The Witness: Yes.

(Testimony of Kenneth G. Phillips.)

Q. (By Mr. Harrington) What occurred at that meeting with respect to this matter?

A. At that meeting we brought out the fact that during the 1941 wage review, in April we established a 75 cent minimum rate for the crane operators and further, our position was at that time that the 5 cent and 13 cent blanket increase, which brought these people up to 93 cents base per hour was to be considered their base rate of pay inasmuch as we had negotiated the 75 cents originally and the others were all enjoying the 93 cents, whereas the new-hirers after that time were being paid less money.

Q. What position did the company take at that time?

A. Well, the company's position was that we had a 60 to 75 cent minimum rate of pay in the agreement and that they would not agree to pay the overhead crane operators any base rate of pay.

Q. Was anything else done about that situation?

A. I believe that that was taken up also with the Conciliator and the union and the company's committee, before the National conciliator during the month of March in the Grant Hotel in these conferences.

Q. Has the union—has the situation been adjusted? [101]

A. To my knowledge it has not to date.

Q. Has the company agreed to negotiate the matter?

(Testimony of Kenneth G. Phillips.)

A. To my knowledge the company has not agreed to negotiate the matter.

Q. How many shifts were worked in the plant during 1941—that is, how many shifts a day?

A. Two shifts.

Q. Is the plant working two shifts now?

A. No. They are on a three-shift schedule right now?

Q. When was the three shift operation put into effect?

A. That was during the month of March.

Q. Was this matter discussed between the company and the union before it was put into effect?

A. Yes, it was at these conferences, general conferences we had at the parts plant between the——

Q. And what took place?

A. The two committees. Well, the company discussed with us the fact that it was going to be necessary to go on a three-shift operation and the only thing that was discussed at that time was that we felt that the third shift would have to come under the agreement the same as the second shift, and the bonuses would have to be paid for the third shift also.

Q. What sections of the contract covered the working hours and——

A. I believe that is Section 4.

Q. And is there any section covering overtime pay?

A. Yes. The overtime pay—the overtime clause states that [102] the work week shall consist of Monday through Friday and that the sixth

(Testimony of Kenneth G. Phillips.)

consecutive day will be paid time and a half and the seventh consecutive day will be paid at double time.

Q. Has the company put three shifts into operation?

A. Yes; three shifts are operating now.

Q. What are the hours of those shifts, if you know? A. They change so much.

Q. Well, can you tell me what the third shift—what would be the hours of the third shift operation?

A. I understand the third shift is operating from 12:00 midnight to 7:00 in the morning.

Q. Was this matter taken up with the company again?

A. Yes. We discussed with the company before the National Conciliator at our meetings in the Grant Hotel the fact that the company was placing — in other words, they had a shift that started at midnight Saturday night which would—

Q. And when did that shift end?

A. Well, that shift ended on Sunday morning at 7:00 o'clock.

Q. What was discussed with reference to that?

A. At that time we told the company that they were working those people on a double time day and not paying the proper rate of pay.

Q. That would be 12:00 midnight Saturday to 7:00 A. M. Sunday?

A. Sunday morning, yes. [103]

Mr. Riggs: May we go off the record?

(Testimony of Kenneth G. Phillips.)

Trial Examiner Hektoen: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Q. (By Mr. Harrington) What was the union's contention with respect to that shift?

A. Well, we felt it was a double time shift inasmuch as it was a shift that worked on Sunday, or a double time day.

Q. And what day of the week would you call that shift then?

A. Well, that would be Sunday.

Q. I mean, what number?

A. Seventh consecutive day.

Q. The seventh consecutive day on that shift?

A. Yes.

Q. What was the position of the company—what did they state?

A. Well, the company's representatives had their own opinion about it and their opinion was it was not the seventh consecutive day inasmuch as they felt that they were starting the work week as of that Sunday and, of course, the company had their position and we had our position.

Q. And the company has followed its own interpretation, has it?

A. The company stated that they would follow their interpretation of it rather than ours, yes. [104]

Q. Was the matter taken up in conciliation service conferences?

A. It was discussed in conciliation service, yes.

Q. What happened there?

(Testimony of Kenneth G. Phillips.)

A. Well, we actually didn't get any definite statement one way or the other and it still is an issue, as I understand it.

Q. Have you in your union capacity taken up the question of job classifications with the company?

A. Yes, we have taken that up.

Q. Does the company have job classifications in effect?

A. The company have their own job classifications, yes.

Q. Were those negotiated between the union and the company?

A. Those were not negotiated between the union and the company.

Q. How were those job classifications set up, if you know?

A. Well, I don't know. The job classifications were set up by the major aircraft corporations in Southern California, and they got together and established the classifications and also, as I understand, rates to apply to those classifications.

Q. Has the union taken up this matter with the company?

A. Yes, we have repeatedly.

Q. Can you place the times that you have taken it up with the company?

A. (No response.)

[105]

Q. When was it first taken up?

A. Well, it was first taken up at these general conferences that we had with the company's labor relations committee. I wouldn't put dates down

(Testimony of Kenneth G. Phillips.)

because I don't believe that there is any general conference that we ever had that the subject wasn't discussed to some extent.

Trial Examiner Hektoen: All you are testifying to about now took place sometime in 1942, is that right?

The Witness: Yes.

Mr. Harrington: Since January.

Q. (By Mr. Harrington) What happened in those conferences with respect to this matter? What was said and done?

A. Well, the company's position has been and was at that time——

Q. What position did the union take?

A. We told the company we felt they had no right to establish arbitrarily, job classifications and rates of pay without negotiating those rates of pay and classifications with the organization.

Q. And what position did the company take?

A. The company's position was that they were only using those classifications and rates as a guide and our position further on that was that they ceased to be a guide when the company actually put them into effect.

Q. How did you know that the company put them into effect? [106]

A. Well, every day on the current wage review they refused to go beyond certain established tops for specific jobs for individuals that were being reviewed on those jobs.

(Testimony of Kenneth G. Phillips.)

Q. Did you take the matter up personally with anyone representing the company at any time?

A. I don't think that I made any personal issue, only that one time I took it up with Mr. Wiseman and also in the conference that we had relative to one of our employees that we felt was improperly classified in the inspection department. We were discussing that individual.

Q. Who was discussing him?

A. Let me see, I was there with Committeeman Brandon of that department, Mr. Wiseman for the company and the department head, Mr. DeMarsh and Mr. Thompson were there also and in our conversation relative to the individual involved we were discussing the amount of money and we were discussing the rates of pay and so forth.

Mr. Wiseman brought out the point again of the 60 to 75 cent minimum we have in our agreement.

Q. What did he say?

A. Well, he stated that that was the only rate that we had in our agreement and that until the company would agree to set down and negotiate rates of pay that that was as far as the company would go. And he further stated at that time that he was telling me then and there that the company would not [107] sit down and negotiate rates of pay and classifications at that time.

Q. Did you state anything at that time?

A. Well, I just—I merely stated that we had

(Testimony of Kenneth G. Phillips.)

ways and means to force the company to negotiate those rates of pay and classifications.

Q. Can you place the date that you had that conference with Wiseman?

A. Some time in February. I don't remember exactly the date.

Q. Was that matter taken up again between members of your committee and the company's committee—the committees that you have mentioned in your previous testimony?

A. Well, it has been taken up continuously and we have never been able to effect any satisfactory answer to the question.

Q. Has the company ever furnished the union with a copy of the job classifications?

A. No.

Q. The rates of pay?

A. No; they have never given us that.

Q. Has the union ever asked for a copy?

A. Yes, and in one of our general meetings between the labor relations committee of the company and our general committee, Mr. Roy Brown, the business representative, stated [108] to Mr. Fleet that we would like a copy. Mr. Fleet stated that the classifications were no secret and they would be very glad to supply that copy, and also stated that Mr. Wiseman would see that we received it.

Q. Did you ever ask any representative of the company for a copy, you yourself, personally?

A. Well, yes. After that particular incident

(Testimony of Kenneth G. Phillips.)

—and incidentally the copy was never forthcoming, I discussed it with Mr. Wiseman myself and he stated that if that statement had been made that he didn't recall it, and then further I got in touch with Mr. Fleet and tried to recall to his mind the fact that he was going to give us those classifications and he couldn't remember himself, so we never received them.

Q. Did you ask Mr. Fleet about the statement?

A. Yes. He said that he just didn't remember that he had ever made that statement to us in a general conference.

Q. Has this matter been settled satisfactorily to the union or has it been discussed or negotiated?

A. You mean—

Q. Between the company and the union, this matter of job classifications and rates of pay?

A. The matter of job classifications has not been negotiated between the company and the union, and at no time has the company shown any inclination or willingness to negotiate with the union. [109]

Q. Mr. Phillips, in your official capacity you take up grievances with officials of the company, I believe you stated, did you not?

A. Yes, sir.

Q. What official do you take them up with?

A. Well, right now I am taking them up with Mr. Walker Burr, the labor relations manager, or his assistant, Mr. Vance.

Q. What grievances have you taken up with Vance?

(Testimony of Kenneth G. Phillips.)

A. Well, I have taken up grievances with Mr. Vance—as a matter of fact I take up grievances with him every day.

Q. Have you taken up any grievances with him about changing people from hourly to salaried pay bases? A. Yes, I have.

Q. When and what was that grievance, or when was it?

A. Well, it came to my attention some time back that the company was taking our union people, without changing their job status or anything else, and placing them on a salaried rate of pay and taking them out from under the jurisdiction of the union by this change from hourly to salary.

Q. How did you bring that matter to Vance's attention?

A. Well, that was filed in the form of a grievance.

Mr. Harrington: Will you mark this for identification, please? [110]

(The document referred to was marked as Board's Exhibit No. 9 for identification.)

Q. (By Mr. Harrington) Mr. Phillips, I show you a paper I have had marked for identification as Board's Exhibit No. 9, and ask you if you are familiar with that and can describe it?

A. That is the grievance that I filed.

Q. Did you compose this grievance?

A. That is my composition.

Q. And in whose handwriting in this?

(Testimony of Kenneth G. Phillips.)

A. That is mine.

Q. That is yours also? A. Yes.

Mr. Harrington: I offer Board's Exhibit No. 9 for identification in evidence as Board's Exhibit 9.

Mr. Riggs: No objection.

Trial Examiner Hektoen: It may be received, without objection.

(The document heretofore marked as Board's Exhibit No. 9 for identification was received in evidence.)

BOARD'S EXHIBIT No. 9

Grievance Form

Aeronautical Mechanics Lodge 1125, I.A.M.

San Diego

Date June 2, 1942

Name Aeronautical Mechanics Lodge 1125

Dept. _____ Clock No. _____

Address _____ City _____

Rate Pay _____ Last Raise _____ Date _____ Shift _____

Present Duties _____ Months Service _____

Leadman _____ Foreman _____

Details of Grievance

It has come to the attention of Aeronautical Mechanics Lodge 1125 that Department 8 (Purchasing) has been taking hourly paid Supervisors who come under the jurisdiction of the Union and placing them on the administrative payroll (a salaried rate of pay). This is contrary to the Union Agreement and we are anxious to have this practice discontinued. I have also been notified and verified the fact that Ed Stuart, Foreman of that Department,

(Testimony of Kenneth G. Phillips.)

has evidently checked the dues deduction cards on all salary employees in his Department, especially women employees who are Union members, and had his clerk notify those women employees on salary that the Union had no jurisdiction over them and could do them no good and requested them to write a letter to the Union requesting the Union to take them off the membership roll. We suggest that Mr. Stuart confine his activities to the management of his Department and leave the Union business to the Union Representative. There is enough work for both parties concerned.

We hereby request and demand that the Company notify Mr. Stuart of the Purchasing Department to refrain from coercing and intimidating our Union people, regardless of pay status and we further request that a check be made on those people now on salary who were originally hourly paid employees and have been transferred to salary so that in compliance with the understanding arrived at in general conferences with the Consolidated Labor Relations Committee, the Union Committee and Mr. Harry Malcolm, U. S. Conciliator, that all those people who were originally on hourly will be returned to an hourly rate of pay so that they may obtain the full benefits of our Union Organization.

Shop Committeeman

Employee's Signature

Disposition

Referred to N.L.R.B.

Committeeman

Business Agent

(Testimony of Kenneth G. Phillips.)

Q. (By Mr. Harrington) Did you have any other conversation or contacts with them after that about this matter?

A. Yes. I contacted Mr. Vance. I wanted to get Mr. Vance's reply.

Q. And when did you contact him? [111]

A. Well, I imagine it was around——

Q. Bearing in mind the date on that exhibit which, I believe, is June 2nd?

A. I think it would be around the 8th or 10th. I am not positive.

Q. And where did you see him?

A. I saw him in his office in the plant.

Q. Who was present?

A. Just Mr. Vance and myself.

Q. What was said at that meeting between you and Vance?

A. Well, at that meeting—I mean—that is concerning——

Q. Well, concerning this matter?

A. Concerning this matter? I stated to Mr. Vance that I wanted the company's answer on the grievance and he told me that Mr. Ed Stewart, who I had stated in the grievance had spoken to these people, and I contended in the grievance that he was the party probably who was at fault and he stated, "No," that it was not Mr. Ed Stewart; that a memorandum had been sent out under the signature of Mr. Perrilli, the production manager, as I understand it, and it had been sent out to the head of that department and in that memo it stated

(Testimony of Kenneth G. Phillips.)

that, if I recall the language properly, that the following people—I didn't see the people but it said "The following people" and it was attached, evidently, that those people would be contacted by the company, by Mr. Stewart and told [112] that, relative to the company policy on salaried employees, that they should do something about their affiliation, or dis-affiliation with our local if they wanted to remain in their salaried positions.

Q. Did Mr. Vance show you that letter?

A. Mr. Vance didn't actually show it to me. It was on the table there and I had an opportunity to see it, and then he read me the excerpts from it, or the majority of it.

Q. How much of it did he read to you?

A. Just the part that I stated there, that the attached people, which he didn't read the names, were to be contacted by the foreman and that the company's policy—evidently the company has a policy that these men, these people are to be contacted and told the company's policy relative to salaried employees, and that they were to tell them that they were to get in contact with the lodge relative to their union membership.

Trial Examiner Hektoen: And what?

The Witness: They should not belong to our organization.

Trial Examiner Hektoen: In other words, they were to quit?

The Witness: That they no longer wanted to be on our union rolls.

(Testimony of Kenneth G. Phillips.)

Trial Examiner Hektoen: All right.

Q. (By Mr. Harrington) Mr. Phillips, could you identify a [113] copy of that letter if you saw it?

A. Yes, I think it could identify it.

Mr. Harrington: Will you mark this, please, Mr. Reporter?

(The document referred to was marked as Board's Exhibit No. 10 for identification.)

Q. (By Mr. Harrington) Mr. Phillips, I show you a paper I have had marked for identification as Board's Exhibit 10. Have you seen that paper before?

A. That is the letter. It is under the signature of Mr. C. W. Perrilli.

Mr. Riggs: Where is the list attached?

The Witness: I never saw the list attached myself.

Mr. Riggs: No objection.

Mr. Harrington: I offer Board's Exhibit 10 for identification in evidence as Board's Exhibit 10. This is also a copy that has been agreed upon between counsel.

Trial Examiner Hektoen: Without objection it may be admitted.

(The document heretofore marked for identification as Board's Exhibit No. 10 was received in evidence.)

(Testimony of Kenneth G. Phillips.)

BOARD'S EXHIBIT No. 10

(Copy)

Consolidated Aircraft Corporation
San Diego, California

May 20th, 1942

Confidential

Memo to: Mr. Wm. Renison

From: C. W. Perelle

Subject: Union Dues

Attached you will find a list of names of people who are a part of your supervision, who are on the salary payroll, and who are still paying dues to the Union. Obviously, this is contrary to our policy.

It will be necessary for you to discuss with these individuals, their wishes concerning their status as supervisory personnel, or their remaining a part of the Union setup. They cannot do both. If the individual does not desire to discontinue his affiliation with the Union, he certainly cannot be permitted to retain his present position, but must be transferred back to a job commensurate with his ability and attitude concerning membership in the Union.

C. W. PERELLE

Vice President in Charge of
Production

Duplicates to:

Mr. E. H. Jones

Mr. Wm. A. Maloney

Mr. Jos. Gwinn

Mr. H. S. Martin

(Testimony of Kenneth G. Phillips.)

Mr. Harrington: That is all, you may cross examine.

Trial Examiner Hektoen: Just a minute. May I ask a question before you start, Mr. Riggs, and then we will have a short recess? [114]

This letter or copy thereof, is what Vance read to you from, is that right?

The Witness: That is right.

Trial Examiner Hektoen: All right, we will have a five minute recess before cross examination.

(A short recess was had.) [115]

Recross Examination

Q. (By Mr. Riggs) Mr. Phillips, since you became business agent on January 1, 1942, your entire time has been taken up with the negotiations with the company about one thing or another, hasn't it?

A. I wouldn't say my entire time with negotiations.

Q. By negotiations, I mean to cover the filing of grievances as well as negotiations.

A. Yes, I think the majority of the time.

Q. This union has no other affiliations with any other company, other than Consolidated, has it?

A. That is right.

Q. And you, as business agent, devote your entire time to Consolidated? A. That is right.

Q. When this union agreement was first entered into in 1939, were you with the union?

A. No, sir.

(Testimony of Kenneth G. Phillips.)

Q. Have you any idea of the number of employees in the plant at that time?

A. No, I haven't.

Q. Well, you wouldn't disagree with the fact that the employees have probably doubled or tripled in the last couple of years?

A. No, I think I would agree with that.

Q. And that from a rather small beginning here it has now [116] reached a phase of enormous operation? A. That's right.

Q. With some 40,000 people employed in it?

A. That is what I understand.

Q. Do you know the number of departments that there are in it?

A. I have an approximate knowledge; they change so fast I don't know, I don't really have an opportunity to keep up with them.

Q. There are very nearly a hundred different departments, are there not? A. 90-some odd.

Q. In both Plant No. 1 and Plant No. 2, exclusively? A. That's right.

Q. And there have been changes in the departments from time to time as production has required changes, have there not?

A. There have been.

Q. You are aware that in December, 1941 the company passed under new management?

A. I am.

Q. With a new president and new chairman of the board, new directors, and many people of the

(Testimony of Kenneth G. Phillips.)

organization at the present time have come there in the last few months?

A. I am aware there have been many changes, yes.

Q. For instance, Mr. Wiseman isn't there any longer, is he? [117] A. No, sir.

Q. Mr. Walter Bowers is now labor relations director? A. That is right.

Q. And Mr. Persons is industrial relations director? A. Yes.

Q. And Mr. Perelle, that you spoke of, is production manager? A. Yes.

Q. Have you any idea of the number of foremen there are now in the plant?

A. No, that's something that I haven't bothered with a great deal. I haven't any idea.

Q. Would you take my word for it that there are 149 foremen and 247 assistant foremen, 47 general foremen, and 6 assistant general foremen?

Mr. Ryan: We will stipulate to that, Mr. Riggs.

Q. (By Mr. Riggs) Now, with reference to the shop committeemen, and I think you agree there were at least 270 in number, contacting that number of foremen with reference to individual's rate increases, and so forth, there is apt to be some slip-up along the line, isn't there?

A. There is apt to be, I presume; but I think the majority of our cases are handled in due form.

Q. You spoke, for instance, of 285 men who had been raised individually in the inspection department without consultation with the union. When

(Testimony of Kenneth G. Phillips.)

you brought that to the atten- [118] tion of the company, Mr. David Fleet in the relations committee, that you spoke of, that was remedied to your satisfaction, wasn't it? A. No, sir.

Q. What happened to it?

A. At that time the company offered to withdraw the increases. We stated that the effect it created in the minds of individuals could not be corrected by either withdrawing or granting. We didn't care which way they went on the proposition.

Q. They offered to withdraw the increases, but you didn't want them withdrawn?

A. We stated we didn't care which way they went.

Q. You thought that would be a blow to the prestige of the union?

A. We thought it was done with an ulterior motive to some extent.

Q. In one department out of 96?

A. One entire department affecting 1500 people.

Q. A very large department?

A. That's right.

Q. You spoke, also, of a memorandum that was issued by Mr. Leigh after consultation with some of the company officials in the union, and you identified the memorandum as one which was signed by Mr. Laddin. Is that the one you meant? [119]

A. No—whether Mr. Laddon or Mr. Leigh signed that, I can't recall.

Q. Let me refresh your recollection and ask you if this wasn't the memorandum to all department

(Testimony of Kenneth G. Phillips.)

heads from Mr. Leigh, about this question of interim raises.

Mr. Harrington: When was that memorandum issued which you have referred to? Was that the one——

Mr. Riggs: No, this is not the one.

Mr. Harrington: May I see it, please, Mr. Riggs?

The Witness: There's another memorandum evidently.

Mr. Harrington: I am willing to stipulate this was issued April 11, Mr. Riggs, if you will so state.

Mr. Riggs: I will offer in evidence as Consolidated's Exhibit No. 1, the memorandum dated the 11th of April, 1942: To all department heads: Subject: Consulting union committeemen on interim wage changes, signed: C. P. Leigh, vice president and assistant general manager.

(Thereupon the document referred to was marked as Company's Exhibit No. 1 for identification.)

RESPONDENT'S EXHIBIT No. 1

Copy

No. 4

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.

11 April 1942

Memo to: All Department Heads

Subject: Consulting Union Committeemen on Interim Wage Changes

The Agreement between Aircraft Mechanics Lodge No. 1125, I. A. of M., and this Company provides

(Testimony of Kenneth G. Phillips.)

that Union committeemen are to be consulted on interim wage increases for employees represented by the Union. In discussions with representatives of the Union and the U. S. Department of Labor conciliator, it has been agreed that the following procedure will be followed in the future on all interim wage increases:

1. If a department head decides that an employee under his supervision is deserving of an interim merit increase, he is to consult the Union committeeman representing the employees in his department. The committeeman shall investigate the work that the man is doing and promptly advise the foreman whether there is objection to the proposed increase. If the foreman and the committeeman agree to the proposed increase, the Change of Status slip is to be forwarded to the Labor Relations Department in the regular manner, after signature by the foreman and initiating on the reverse side by the committeeman. Otherwise, the foreman and the committeeman are to fill out, in quadruplicate, a wage review form; one copy to remain with the foreman, one copy to be retained by the committeeman, one copy to be forwarded by the foreman to the Labor Relations Department, and one copy to be forwarded by the committeeman to the general offices of the Union.

2. Upon receipt of the wage review form, the cases will be handled by the General Wage Committee, which Committee will meet and hand down a decision within five days after the case has been filed. In the event the General Wage Committee

(Testimony of Kenneth G. Phillips.)

is unable to reach an agreement, the matter shall be submitted to arbitration as provided for in Article 23 of the Agreement.

The above procedure shall also be followed before any wage decreases are put into effect.

S/ C. T. LEIGH

Vice President and Assistant
General Manager

DGF:mf

(Copy)

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.

Interim Wage Recommendation

Plant No._____ Date_____

Employee's Name_____ Dept._____

Clock No._____ Shift_____ Present Base

Rate_____ Proposed Increase_____ Classification

Foreman's Comments:

Committeeman's Comments:

Signed:_____ Signed:_____

Foreman

Committeeman

Q. (By Mr. Riggs) You were familiar with this memorandum shortly after it was issued, or prior to its issuance?

A. I don't believe I have seen this memorandum. The memorandum we drew up at that conference was a different memorandum, much shorter.

(Testimony of Kenneth G. Phillips.)

Mr. Harrington: Pardon me; I believe this is the one [120] you refer to.

Q. (By Mr. Riggs) Is this the memorandum you are referring to, Board's Exhibit No. 7, dated January 22, 1942, signed by I. M. Laddon?

A. That is right. That is the one we formulated in his office.

Q. This doesn't say anything about consulting committeemen, does it? Read it, let me see.

A. Yes; after consulting foremen, the union committeemen in the department concerned. It's in parenthesis right in the center. That is part of our current union agreement.

Q. That is a quotation from the agreement; but Mr. Laddon's memorandum of January 22 doesn't state that that procedure shall be followed, does it? It simply states where the employee merits an increase he will get it.

A. That is right; but he is not to be given that increase unless it is stipulated to by the committeemen.

Q. Was this memorandum satisfactory to the union?

A. I think I am right on this now.

Q. Let me refresh your recollection, Mr. Phillips. There has been a previous memorandum issued some time late in 1941 to the effect—I don't know whether it came after Pearl Harbor or before—that there wouldn't be any interim increases, but only increases granted by the wage review board. [121]

A. That is right.

Q. And the union protested about that, and the

(Testimony of Kenneth C. Phillips.)

company withdrew its position and arranged that there should be interim increases upon merit as recommended by the foremen?

A. That is right; that was after this conference.

Mr. Harrington: Pardon me, Mr. Riggs. I have a copy of that, if you wish it.

Mr. Riggs: I don't think it is material.

Mr. Harrington: I don't either. I thought if you wanted it, I have it.

Q. (By Mr. Riggs) The union wasn't satisfied after that memorandum, so they had another consultation with Mr. Leigh and issued this memorandum of April 11, Company's Exhibit No. 1?

A. That memorandum there is not the memorandum that came out of this general conference. That is all I can say.

Q. Whether it came out of the general conference or not, doesn't that memorandum completely satisfy all the union's complaints on this interim agreement business?

A. This came out much later.

Q. Answer my question. Doesn't that satisfy all the union's grievances about the increases of interim wages, after consultation with the committeemen?

A. If this is followed in the future, it will suffice; but it has nothing to do with those things, that have been [122] prior to the issues there.

Q. In the past? A. That is right.

Q. Can you state of your own knowledge any case

(Testimony of Kenneth G. Phillips.)

at the present time where that procedure outlined by Mr. Leigh is not being followed?

A. No. I think the company is following it very closely at the present time.

Q. So that the substance of your grievance about this is that there was a time when the company didn't want to grant any interim increases, withdrew its position on that, and then you claim that sometimes, occasionally, as you were told by Mr. Lewis, there were interim increases,—

A. I prefer to answer that in my own words. I don't believe the words you are trying to put in my mouth are correct.

Q. I am not trying to put words in your mouth. I am merely trying to summarize the situation as to what the union grievance is about the wage increases at the present time.

A. I will answer in my own words. I prefer to do that. The union and the company had a stipulation or agreement which they were supposed to follow and which they did not follow, and due to the fact that they did not follow it in the past, that caused certain conditions to arise in the shop with our union people that were not in conformity with the agreement. Therefore, they breached the agreement. That [123] has been done in the past.

This should satisfy us for the future, on all future cases, because I don't think there will be any more efforts not adhered to.

Q. In any one of these particular interim agreements, did you resort to the procedure which is set

(Testimony of Kenneth G. Phillips.)

out for yourselves, in the filing of agreements, in going through the various boards that consider grievances?

A. No, we did not. I think I testified as to how we handled those cases.

Q. With reference to the discharge of Mr. Mergan and Mr. Fisher, Mr. Mergan's case, without going into the merits of it, was another one of those cases where everybody concerned lost his temper, wasn't it?

A. I don't believe in Mr. Mergan's case that that was the case, no.

Q. It is a fact, though, that both Mergan's and Fisher's cases became a subject of conferences with Mr. William R. Walsh, the Regional Director, here in San Diego?

A. We had a meeting, yes, at which I attended, at which Mr. Walsh came down and stated the Board's opinion.

Q. And we sat all day on those two cases, and went over affidavits that had been signed, pro and con?

A. I believe we sat; I don't believe it was all day, but we were on the subject, yes. [124]

Q. The union never took Mr. Mergan's case either to a grievance, or doesn't make it the subject of a grievance in this proceeding, does it?

A. That is what I understand, no.

Q. With reference to Mergan and Fisher, isn't it a fact that the company's officials sat down and

(Testimony of Kenneth G. Phillips.)

talked with you about these cases whenever you wanted? A. It is a fact they talked.

Q. They thought they were right in their position and that there had been a violation of the rules by Mr. Fisher and Mr. Mergan also?

A. Yes, but we didn't feel they had an open mind on the subject.

Q. You felt the company didn't have an open mind on the subject, but the union did have an open mind? A. That's quite possible.

Q. In other words, they didn't refuse to negotiate or talk to you, but each side stuck to his position, you that the men should be reinstated, and the company felt they should not?

A. As I testified before, there was very little conversation on these two gentlemen, because the company did not prefer to discuss it too long.

Q. Hadn't the company given to Mr. Walsh and to the union copies of affidavits of all the employees that had anything [125] to do with either one of the cases?

A. I presume the company might have given it to Mr. Walsh, but not to our organization.

Q. You heard all the summaries at the meeting with Mr. Walsh?

A. No, sir. I didn't hear all the affidavits summarized; in Mr. Mergan's case there was no summary whatsoever.

Q. But your idea of collective bargaining with the company is that the company has to agree with your position?

(Testimony of Kenneth G. Phillips.)

Mr. Ryan: I object to that as immaterial.

Trial Examiner Hektoen: Sustained.

Q. (By Mr. Riggs) When did the company refuse to talk further with you about the Fisher case at any time?

A. The company's answer when the first question was put to them was not in an effort to try to get all of the subject matter out for debate, but was merely reiterating the stand they had taken before, and they stated in very abrupt terminology the fact that the company was resting on the fact that they felt justified in the discharge, and they did not care to discuss it any further.

Q. Did you file a grievance on the Fisher case?

A. No, I did not file a grievance on the Fisher case. I might state further: It was not up to me to file that grievance.

Q. I don't think I have got in quite clear in my mind what [126] the grievance is about in regard to crane operators. Will you tell me that again?

A. Yes, I can go through it. You might read the record, but I will review it, if you like.

Q. You agreed on it in 1941?

A. I was a member of the wage board in 1941, which started in April, 1941. During those conferences, or during those board meetings, we took up the subject of crane operators.

We negotiated the subject, the company's side and the union's side, and we arrived at a solution as to the rate of pay to be paid to all crane operators. As a matter of fact, on the payroll at that time

(Testimony of Kenneth G. Phillips.)

that amount was 75 cents per hour, and all those crane operators were brought to that rate of 75 cents an hour.

Following that we had a 5 cent blanket increase plus 13 cents blanket increase, which brought those men to 93 cents base rate per hour.

Therefore, if those men were receiving 93 cents and others who had hired in after the blanket increases, were not brought up to that rate, we felt automatic increases which brought the average rate, or the rate of pay, the basic rate of pay up to 93 cents an hour should be given; and we felt that rate was established through the negotiations subsequent to the 13 and 5.

Q. These people that had entered the employ of the company [127] came in subsequent to that automatic increase of 5 and 13? A. Yes.

Q. In other words, your position was that although a man came in subsequent to the automatic increase of 5 and 13, that should be retroactive? He ought to get that increase even though he wasn't in the employ of the company at the time it was granted? A. Not retroactively.

Q. You thought he ought to get it even though he was not in the employ of the company at that time?

A. That is right. We believed that was the rate established through our negotiations.

Q. Was that ever made a subject of grievance?

A. That was never made a subject of grievance; but as I stated before, it was taken up by the con-

(Testimony of Kenneth G. Phillips.)

ciliator. We felt it could be solved amicably at that conference.

Q. The conciliator was Mr. Malcolm, was he not?

A. That is right.

Q. From the Los Angeles office of the National Labor Relations Board?

A. No, I think the National Conciliation Service.

Mr. Harrington: The Department of Labor, Mr. Riggs.

Q. (By Mr. Riggs) There were a great many things taken up with Mr. Malcolm, and some were settled to the satisfaction of the union and some were not, and on others, no conclusion [128] was reached at all.

A. That is right.

Q. Was this crane operator wage matter one of the things which no conclusion was reached on?

A. We felt there could be a conclusion, but the company's position on the matter was not one where they were inclined to reach a settlement.

Q. The matter was discussed with Mr. Malcolm, pro and con, and the company stated its position and you stated yours?

A. Yes. If I would be in a position to tell the conciliator's opinion of it, it might be different; but I don't think we should.

Trial Examiner Hektoen: At least nothing has happened. Is that right?

The Witness: That is right.

Q. (By Trial Examiner Hektoen) What happens now? When a new crane operator is hired, he gets 75 cents?

A. He gets 60 cents.

(Testimony of Kenneth G. Phillips.)

Q. Anyway, he doesn't get 93 cents?

A. No.

Q. And you think he ought to?

A. We thought we negotiated the rate of pay properly.

Q. (By Mr. Riggs) You believe that everybody who becomes a crane operator from the time he is employed should get the same rate of pay? [129]

A. It is our understanding the company is very anxious to correct any inequalities in pay for people doing like work. Therefore, we contend that the man who does the same job and is getting 93 cents and the one who is doing a like job getting 60 cents is not getting proper pay.

Q. Are you sure about that, to your own knowledge, that people now employed as crane operators are getting different rates of pay?

A. I think the crane operators, I understand the wage is 60 to 75 cents, which we determined for a period of time in which the employee learns the work; and we would never contend, and have never contended during that three months period that he goes from 60 to 75 cents, that he has to be paid any more. However, after the termination of the three months period, and if he has classified, then, is properly classified as a crane operator, we feel justified in asking 93 cents an hour for him.

Q. This matter you spoke of with Mr. Perelle about the changes of pay from the hourly pay basis to salary, you didn't have the list of the people who were changed, did you?

(Testimony of Kenneth G. Phillips.)

A. No, I don't have that list; I never saw the list, as a matter of fact.

Q. Do you know how many there were?

A. I don't. [130]

Q. Do you know whether there were more than 10?

A. No, I couldn't specify as to number; 5, 10 or how many.

Q. Do you know when they had been transferred to salary?

A. No, I don't know that.

Q. Take Loretta Murphy, who is the planning clerk. She was transferred to salary October 1, 1940. She has been on salary since that time, and has since been paying dues to the union. Do you know that?

A. Yes. I happen to know Loretta Murphy very well. She is quite satisfied, however.

Q. These other people that I have here: Do you know—well, take M. J. Davis, who is another stenographer; she has been continuously on salary since she was hired on salary on October 1, 1940, and is still paying her dues to the union. Do you know her?

A. No, I don't know Miss Davis.

Q. Do you know the extensive operations of the company with reference to payroll deductions?

A. I have had no opportunity to know the extensive operations.

Q. You take an individual employee; you know the wages have to be calculated at a certain amount?

(Testimony of Kenneth G. Phillips.)

A. That is right.

Q. Then, you have the union dues deductions, if they belong to the union? [131] A. Yes.

Q. You have the Old Age Pensions, and so forth deducted, and also you have, in buying any defense bonds, they are also deducted?

A. That is true.

Q. You know all those things make for a great deal of multiplication of accounting and a number of clerks? Don't they?

A. I presume they do.

Q. Isn't that the reason the company would be like to be rid of some of this accounting, as much as possible?

Mr. Ryan: I object to the question; he doesn't know that.

Trial Examiner Hekteen: What accounting.

Mr. Riggs: I mean: All the deduction of all these various items.

Trial Examiner Hekteen: What is the purpose of the question? To show it is likely the company would be delighted not to have to deduct the dues any more?

Mr. Riggs: I suppose they would.

Trial Examiner Hekteen: All right.

Mr. Riggs: They have agreed to do it, and they are doing it.

Trial Examiner Hekteen: What is his opinion worth?

Mr. Riggs: Nothing. [132]

(Testimony of Kenneth G. Phillips.)

The Witness: Not much.

Q. (By Mr. Riggs): Now, with reference to the three shifts, that matter was discussed a great deal with the union, was it not?

A. The matter was not discussed at any great length. It was discussed one day, if I recall it, yes.

Q. Do you know any of the reasons with reference to the change to three shifts?

A. Well, yes.

Q. What did the company say was the reason for it?

A. The reason for the three shift operations was in an effort to get more production and to keep the plant continuously in operation.

Q. The work week defined in the contract is from Monday to Friday, is it not?

A. That is right, sir.

Q. So that Saturday would be the sixth day?

A. That is right.

Q. This third shift was to begin at 11:00 o'clock p. m., was it not, and work for 6½ hours and receive eight hours' pay?

A. I believe it was to begin at midnight. I might be in error on that and subject to correction.

Q. I think you are wrong. I think somebody will know better than I do, but I think it is 11:00 o'clock. At any [133] rate, they were to receive eight hours' pay for six and one-half hours' work?

A. Yes.

Q. That was all paid for at time and a half, was it not?

(Testimony of Kenneth G. Phillips.)

A. That is right.

Q. And the union claimed because the sixth day of the week extended over to Sunday, that it was really a Sunday operation and they should get double time?

A. That was our position.

Q. That was the issue between yourself and the company, was it not? A. Yes.

Q. Was that made the subject of grievance?

A. No, that was not made the subject of grievance. That was also taken up, as I stated in my testimony prior to this, in a general conference, and then, also, before the conciliator.

Q. Are you aware that the heads of both the great labor organizations in the company have signified their idea there should be no labor paid for on double time on Sunday?

A. No, I am not aware of that.

Q. You never heard of the letters and speeches that have been made on that subject?

Mr. Ryan: I object to that as immaterial.

Trial Examiner Hektoen: You may answer. Well, he has [134] already answered. He is not aware.

Q. (By Mr. Riggs): The company's position was, as I understand it, that they regarded this as the sixth day, under the contract?

A. That's right.

Q. And it should be paid for at time and a half?

A. That's right.

(Testimony of Kenneth G. Phillips.)

Q. And your position was, whether it came on Sunday, as it came on Sunday, it should be paid in double time?

A. Yes, I think the mathematics would figure that out, that it is the seventh day.

Q. They didn't work seven consecutive shifts, did they?

A. Now that I couldn't answer, sir. I couldn't answer that at all, because I don't know just exactly what shifts of those men involved were. I presume if it were the seventh consecutive day those people would start their regular shift, would be starting on Monday. As a matter of fact, I think it is in our agreement that the regular working schedule will be Monday through Friday.

Q. And that the work week begins on Monday?

A. The work week begins on Monday.

Q. Therefore, all swing shifts would end on Saturday, normally, would it not, except for this sixth day of the third shift, which ran over from Saturday night to Sunday?

A. As I understand it, if you start on Monday and work [135] through seven consecutive days, you are working on Sundays. Likewise, if the shift begins on Monday and the company does not start until Tuesday, the shift begins on Monday, because it is on the agreement. If they start Tuesday and end on Sunday, the work week as established by agreement would be six days.

Q. The Third shift, after it goes off duty Sunday, doesn't come on until Monday at 11:00?

(Testimony of Kenneth G. Phillips.)

A. No, it wouldn't. They have a day of rest, as I understand it.

Q. With reference to the job classifications, which you say you took up with Mr. Vance and others——

A. Job classifications?

Q. Maybe my note is wrong. You took them up with whom?

A. With everyone concerned; with the top executives on down to the lesser lights.

Q. What do you mean by top executives?

A. Well, we have stated in our general conference, even with Mr. Woodhead, the fact that the classifications have been put into effect without our approval, and we have taken that up with the labor relations department, and we have not as yet received a satisfactory answer on it.

Q. In that connection, weren't you told repeatedly the company only used these classifications as a guide to employment in the wage review board?

[136]

A. Yes, that was the company's position, that they were using this as a guide. They said they must have some barometer to use, or some rule for their guidance.

Q. Did you object to their having some guidance? A. No, we didn't object.

Q. Let me finish: In the plant, where there are probably several thousand different kinds of jobs?

A. We didn't object to their guidance, provided

(Testimony of Kenneth G. Phillips.)

they arrived at that guidance through proper procedure.

Q. You have got procedure there in which you have agreed to review the rate of the individual from time to time, and that's been carried out, hasn't it?

A. No. The company is refusing to negotiate for many people, stating that they have already applied the top rate for the type of work they are doing. Therefore, they are refusing to negotiate for those individuals because they have arrived at the top of the company rate as they have established it, without negotiating rates through our organization.

Q. But the rate of the individual, is that negotiated by the wage review board?

A. No, sir.

Q. If the board doesn't agree you have the opportunity for appeal, with reference to any particular individual?

A. The board has refused to negotiate with those individuals [137] for the top rate established.

Q. That doesn't deprive you of the right to appeal and then go to arbitration?

A. It does not deny us that right.

Q. Has the union ever gone to a higher appeal board in arbitration on this subject?

A. You mean with regard to each individual case that comes up, and to arbitrate their case? We would be here for 10 years.

(Testimony of Kenneth G. Phillips.)

Q. That's what the company does almost continuously, day in and day out at the present time, doesn't it? Don't you have several members of the union and several members of the company who are engaged almost continuously daily in these wage rate reviews that come around every six months?

A. Do you want me to give the story as to how the top rates are handled?

Q. No. As I understand it, the union and the company are now engaged in negotiation on wages through the wage review board.

A. The individual is reviewed, and if that individual is receiving a rate of pay that we feel is not commensurate with the man's abilities, and we ask for more money than the company figures he is entitled to, due to the fact that they have established rates which we are not in accord with, then the company is very adamant and states: "That is all we will [138] pay, period." Which we don't construe in any sense of the word as negotiations.

Q. (By Trial Examiner Hektoen) Then they say: That is all they will pay period, because, inferentially, he has the top of the classification.

A. As the company has applied it.

Q. He has been put in by a unilateral act of the company, and that is what you do not like?

A. Yes.

Q. (By Mr. Riggs) How much time is spent in the wage review board by members of the union at the present time?

(Testimony of Kenneth G. Phillips.)

A. That is a moot question of which I have no knowledge. I am not in those wage boards. I have other work to do. You mean on the individual case, or over all?

Q. I mean generally in the plant on this question of review of individual wages. Do you know whether the board sits almost continuously, day after day, or once a week?

A. Yes, it sits continuously. We have got a lot of people to review.

Q. There are a great many people receiving wage increases under those reviews of hire, are there not?

A. Yes, there are a lot of people who are receiving increases. However, those increases are gauged by the company's standards which, of necessity, or whether we like them or not, are forced upon us. [139]

Mr. Riggs: I have nothing further.

Trial Examiner Hektoen: Anything further, Mr. Harrington?

Mr. Harrington: Yes.

Redirect Examination

Q. (By Mr. Harrington) In your position as union committeeman do you handle the entire plant or a certain number of employees, or what?

A. I have certain groups, that is, certain departments which I handle and I handle only, unless it is something that comes up if I am not there to handle it.

(Testimony of Kenneth G. Phillips.)

Q. Did that memorandum of April 11, Respondent's Exhibit 1, I believe, did that satisfy the past grievances of the union as to these increases?

A. No. That was only for future cases. We couldn't correct the condition that the company had already done these things without our knowledge, and the impression that it created in the minds of our union people.

Q. You have stated that the union didn't take Mergan's case or Fisher's case any further after you had contacted Wiseman, I believe. Why didn't you take it any further?

A. Because if the company says: This is it, we felt they weren't actually negotiating. We went in and talked to them. We started out by, say, we were talking about Fisher; we were talking about Mergan; they said; The company is not going to [140] discuss it any further. We are not rehiring them. That isn't negotiating. We didn't feel we had any chance in taking it up further. We were just wasting time.

Q. Now, as to this job classification, was that used as a guide only, or was it put into practice?

A. It was put into practice.

Q. And the union has protested the company's use of that?

A. We have protested vigorously.

Q. How many people in the plant? I believe you testified around 40,000.

A. Approximately.

Mr. Riggs: Approximately.

(Testimony of Kenneth G. Phillips.)

Q. (By Mr. Harrington) And under the present system I believe you stated that it would involve a terrific task, reviewing each individual. Is that correct?

A. It would be an impossible task to go over all of the individual top rates established on people and to try to override the company's decision and take each one to arbitration.

Q. Is that the alternative left to the union now, in light of the company's refusal to negotiate these classifications with the union?

A. That is right.

Mr. Harrington: I have no further questions.

[141]

Recross Examination

Q. (By Mr. Riggs) It would take only one case to go to arbitration to establish a principle in some of the matters.

A. Each individual case is a matter for arbitration.

Q. Take these two men discharged: You say you didn't think there was any use to go any further, in spite of the fact that the contract provides for impartial arbitration between two people represented by the union and two representing the company and the fifth to be chosen by the War Labor Board?

A. That is right.

Q. We did have one arbitration with Mr. Robert Lerner of San Francisco.

A. That is right. How long did it take us to get that one case before the arbitrator?

(Testimony of Kenneth G. Phillips.)

Q. When we got it before him we settled it, didn't we? A. That is right.

Q. And nobody had any criticism of his fairness, did they? A. No, not in that case.

Trial Examiner Hektoen: Anything further?

Mr. Riggs: No.

Q. (By Trial Examiner Hektoen) What is the conciliator's name again? A. Harry Malcolm.

Q. When did he turn up?

A. During the month of April we had quite a few conferences [142] with him.

Q. Is he still here? I got the impression you saw him practically every day. A. Oh, no.

Q. You had a series of conferences during April? A. Yes.

Q. And you refer to general conferences?

A. Our general conferences consisted of conferences held mainly during the months of January and February in the parts plant, with the labor relations committee of the company.

Q. I see.

A. We were negotiating some changes in the agreement at that time, also.

Q. (By Mr. Riggs) May I refresh your recollection, Mr. Phillips, that Mr. Malcolm was down here on March 30, and that there was an agenda of some 21 different matters that were taken up before him?

A. If necessary, you could refresh my memory, but it isn't necessary. I know about it.

Q. That is the fact, isn't it?

(Testimony of Kenneth G. Phillips.)

A. That is right.

Q. That was on the 30th of March?

A. Was it the 30th or a few days subsequent to that?

Trial Examiner Hektoen: What difference does it make?

The Witness: Right around the latter part of March. [143]

Q. (By Trial Examiner Hektoen) Mr. Phillips, what is the significance of this salaried employee being in the union? I have read the agreement, but some of them continued to be union members. Correct? A. Yes.

Q. And that's all right with the unions, of course, and it seems to be all right with everybody. A. It's their privilege.

Q. The only significance of it is that in this one case the company evidently sent around a memorandum to them to get them out of the union. Is that right?

A. That's the general practice; not only in this case.

Q. That is a general practice?

A. Of the company.

Mr. Riggs: Wait a minute.

Q. (By Mr. Riggs) The general practice is: If a person is changed from an hourly pay to a salary that the labor relations committee takes it up with the union and ask for their consent to have him terminated with a union cut-off of dues?

A. Yes.

(Testimony of Kenneth G. Phillips.)

Q. Sometimes the union consents and sometimes they do not?

A. Under no cases do we consent as long as that person is working in the trade. Further, we think it is a problem for the individual, and not a problem for the company. We think it is none of their business. [144]

Q. Anyone on salary may remain with the union if they want to? A. Yes.

Q. (By Trial Examiner Hektoen) That third shift works six and one-half hours and get eight hours' pay? A. That is right.

Q. That is a differential given the third shift. Is that right?

A. That is right. I might state further on this, if you would like to clear it up, the reason for taking the people off from hourly to salary, that in that they take these people who are already on hourly and don't change the job status at all—just take them off and put them on salary—whole departments, we feel that is a matter for negotiation, also, rather than an arbitrary act by the company. [145]

Trial Examiner Hektoen: Now, in reference to Mergen and Fisher, you said that you later talked to Wiseman. That was after the first conversation in December?

The Witness: That is right.

Trial Examiner Hektoen: And he indicated that the company would not change its position with reference to either of them?

(Testimony of Kenneth G. Phillips.)

The Witness: That is right.

Trial Examiner Hektoen: And that he wouldn't discuss it too lengthily. Now, is that what gave you the idea that it would be useless to go on with the grievance procedure?

The Witness: Well, the discussion was merely his statement. That wasn't a discussion.

Trial Examiner Hektoen: He wouldn't discuss it too lengthily?

The Witness: By "lengthy" I mean that was the company's position and they were very adamant in their position.

Trial Examiner Hektoen: What did he say? I would rather have their conversations than your conclusions.

The Witness: Mr. Wiseman stated, and I think that is a matter of record, that the position was still that they were justified in the discharge of Mr. Mergen and they would not consider him any further in an effort to put him back in his position in the plant.

Trial Examiner Hektoen: Was that the first time you talked to Wiseman about it? [146]

The Witness: That was the first time I talked to Wiseman about it, yes.

Trial Examiner Hektoen: Those are all the questions I have. Is there anything more?

Q. (By Mr. Riggs) Did he suggest you might go to arbitration on it?

A. No, he made no suggestion relative to that that I recall.

Q. Well, you knew that anyway?

(Testimony of Kenneth G. Phillips.)

A. Well, I certainly know the agreement, yes.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything further?

Mr. Harrington: Yes.

Redirect Examination

Q. (By Mr. Harrington) As to Mergen and Fisher, isn't it the joint responsibility of both parties to seek arbitration or is the burden of that thrown on the union alone?

A. Well, it is a joint responsibility of both parties inasmuch as it don't state which party is to take the case to arbitration, and——

Q. And why did you think that the matter of Mergen and Fisher ended with Wiseman when you talked to Wiseman?

A. Well, here was the thing. We had just talked to—we had a general conference with Mr. Woodhead, Mr. Laddon, the Labor Relations Committee, at which time Mr. Laddon and Mr. Woodhead stated that Mr. Fleet, Mr. Bowers and Mr. Wiseman [147] were to be the three officials of the Labor Relations Department which were to give us the final decision on any matters pertaining to labor relations.

We went to Mr. Wiseman and we received in no uncertain terms his final decision and there we were.

Q. Well, this procedure of the company asking the consent of the union to stop checkoff of people who were moved to hourly rate basis, that does not involve the consent—giving the company consent

(Testimony of Kenneth G. Phillips.)

to ask those people to drop out of the union, does it?

A. Certainly not, because we feel that the company has no right to say who are—who may not belong to the union in any case.

Q. It is just a consent to stop checking off their dues deductions? A. That is right.

Q. I believe there has been—that this wage review board which we have discussed has not been described in any detail for the record. Just what does that board consist of?

A. Well, that board consists of, first, they have a general board that consists of three men from the union and three from the company, of which one man on the union's panel would be the committeeman, and this committeeman comes in with two members of the union and sets with management, and they discuss in the presence of the foreman, who is a member [148] of that company panel, each individual and they are to review that individual as to the merits that he has on the job he is performing, and give him an increase of pay subsequent to the shown merits on the job. Then if that committee fails to agree then they send that to another board which is the master board consisting of two members—three members of the union and three from the company, and they spend five days reviewing that individual and if at the end of those five days they are not able to affect an agreement, then we go into the arbitration proceeding as provided in Section 23 of the union

(Testimony of Kenneth G. Phillips.)

agreement, in an effort to settle the problem at hand.

Mr. Harrington: I have no further questions.

Recross Examination

Q. (By Mr. Riggs) Well, just one thing. When people are transferred into the position of confidential clerk, or something like that, it would bring them outside the pale of the union and then they are permitted to resign, are they not?

A. Well, I don't think that we recognize the company's classification of "confidential clerk," and I think that if that is an issue that we could take up separately, we probably never would agree on it also.

Mr. Riggs: That is all.

Trial Examiner Hektoen: All right, Mr. Phillips, thank you. [149]

(Witness excused.)

Trial Examiner Hektoen: The agreement is in evidence, is it not, Mr. Harrington, that agreement that now obtains?

Mr. Harrington: Yes. I believe the changes are marked in that exhibit.

Trial Examiner Hektoen: You may proceed.

Mr. Harrington: Mr. Wilkerson.

DON D. WILKERSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) What is your name?

A. Don D. Wilkerson.

Q. And your address? A. 4233 - 33rd.

Q. Are you an employee of the company?

A. No.

Q. Have you been?

A. I have in the past; yes, sir.

Q. Are you a member of the union?

A. I am.

Q. And do you occupy any official position?

A. Business representative. [150]

Q. How long have you been in that position?

A. Since January 1st.

Q. Were you among those present in Mr. Larimore's office on April 15th when Williamson's case was discussed? A. I was.

Q. Were you here this morning when Williamson testified? A. I was.

Q. You heard his testimony, did you?

A. I did.

Q. Is it correct?

Mr. Riggs: I object to that.

Mr. Harrington: I was just trying to take a short cut.

Mr. Riggs: Ask him to summarize it.

Mr. Harrington: I will do that if you wish. I thought I would take a short cut.

(Testimony of Don D. Wilkerson.)

Q. (By Mr. Harrington) Can you relate the discussion that took place at that time?

A. On April 15th at possibly 10 o'clock in the morning Mr. Williamson came to my office.

Q. Is it Williams or Williamson?

A. Williamson. Williamson came to my office at 1054 Third Avenue and told me that he had just been discharged from the Consolidated Aircraft Company.

Mr. Williamson related to me that——

Trial Examiner Hektoen: Let us get down to Larimore's [151] office.

Mr. Harrington: Yes.

Trial Examiner Hektoen: What happened there?

The Witness: You have got me confused in this respect: He wanted me to convey what Mr. Williamson had said this morning. Do you want to carry it right from Larimore's office on?

Q. (By Mr. Harrington) Give your version of what occurred at the meeting that evening.

A. In Mr. Larimore's office was Mr. Brown, Roy Brown, Mr. Williamson, Mr. Wiseman, Mr. Larimore, Mr. Milton Hangen, Mr. Eastin and Hank Legal.

I had previously taken a grievance from Mr. Williamson in my office that morning.

Upon arriving at Mr. Larimore's office with Mr. Williamson, Mr. Roy Brown, I presented a grievance to Mr. Larimore. I read the grievance. At the time he called in three parties—the three parties I mentioned, Hangen, Eastin and Hank Legal.

(Testimony of Don D. Wilkerson.)

There was much discussion there pro and con as to why—leading up to Williamson's discharge.

As I understood it a man by the name of Brown had went to Mr. Hangen's office for the purpose of receiving that insurance policy.

A week previous a man had refused to work under another lead man. In due course we talked to Mr. Hangen. Mr. [152] Hangen asked Mr. Brown about the events which led up to Mr. Hangen telling him that he was going to have to transfer him to work for Mr. Ewert. The man told Mr. Hangen at that time that he would quit before he would go to work for Mr. Ewert.

That was previous to the dinner hour, I believe. I believe they eat from 7:30 to 8:00, so he said he was going to quit at 9:00 o'clock. The result was than Hangen encouraged the man to work through until 11:00 o'clock, at which time he discharged the man.

Mr. Williamson being a committee man in that department, during the dinner hour the man had came to Mr. Williamson and told him what had happened.

Mr. Riggs: Now, wait a minute. What is this? Is this the conversation that took place on April 15th in Mr. Larimore's office?

The Witness: That's what you're asking for, isn't it?

Mr. Riggs: But I want you to say what each one said.

Mr. Harrington: Describe the conversation as

(Testimony of Don D. Wilkerson.)

best you remember it. What was said and who said it. This was concerning Williamson's discharge. That is the meeting I am referring to.

A. It was a three hour conversation there and I don't recollect all that was said. There was much said. It would be impossible for me to remember statements pro and con.

Q. (By Mr. Harrington) I realize that. [153]

A. —during that meeting. On the company's part there was five men talking at one time, so I don't think that I could tell you word for word detailed conversations.

Q. I don't expect that. I just want your best recollection now.

Mr. Riggs: May I speak off the record a minute.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Q. (By Mr. Harrington): Mr. Wilkerson, did you attend a meeting between the company and the union in your official capacity, which has been testified to concerning these individual increases?

A. I did.

Q. When were those meetings held?

A. Between January and March.

Q. And what occurred?

A. At that time the union had submitted previous to that 12 grievances, to Mr. Wiseman, in regard to men that had been hired out of the state,

(Testimony of Don D. Wilkerson.)

who had, upon arrival in San Diego, and after starting to work, the foreman in the individual departments had seen fit to cut their wages. That was what the grievance consisted of—all 12 of them. They were later carried in to the general conferences held in the Parts Plant at which time no agreement was reached. [154]

Q. These men you say were hired outside of the State?

A. Outside of the State of California, yes.

Q. How were they hired?

A. They were hired by representatives of the Consolidated Aircraft Company. At the time of their hire they were given letters stating the occupations that they were to fill upon their arrival here, the amount of money that they was to receive for these occupations upon going to work.

Some of them were cut before they went to work—their hourly rate was cut. Some of them had worked two or three weeks and some of them six weeks, and some of them three months.

There was originally 12 of them but by the time we got into the general conference there was 16. At that time in the general conference——

Q. How did these come to your attention?

A. The individual men came to the union office and complained that their wages had been cut. I in turn filled out grievances on them.

Q. And you presented those grievances and filed them with the company, is that right?

A. To Mr. Wiseman.

(Testimony of Don D. Wilkerson.)

Mr. Harrington: May we go off the record?

Trial Examiner Hektoen: Off the record.

(Discussion off the record.) [155]

Trial Examiner Hektoen: On the record.

Q. (By Mr. Harrington): When I asked that question I was referring to those individual increases and not to these out of state hires.

A. You meant the interim increases?

Q. That is right. That is what I was referring to and my question, as I recall it, was did you attend a meeting between the company and the union in which those interim wage increases were discussed?

A. I attended the original meeting with Mr. Laddon and Mr. Woodhead, and also one meeting in the presence of Mr. Lee.

Q. And can you relate what occurred in those meetings, Mr. Wilkerson?

A. We had went to the plant—we called Mr. Lee and made an appointment. I might go back and say that in the original meeting with Mr. Woodhead and Mr. Laddon—

Q. When was this?

A. This was the first part of January. Mr. Laddon and Mr. Woodhead—we brought to their attention that a memorandum had went out in the plant—possibly the foremen had read it and had put it into force and that they were to cease all interim increases, and we figured that it was outside of the contract—a violation of the contract.

(Testimony of Don D. Wilkerson.)

Mr. Woodhead in turn said that he would send a memo out contradicting the one of, I believe, February—no, [156] December it was—it was out in December, and following that, the next day, that evening, around 4:00 o'clock we got ahold—they said that the memo would come out immediately, or it might have been two days later—I don't know, and we went to Mr. Lee's office and at that time the union committee and Mr. Lee worked out this other memo to be sent out to all of the foremen telling them that they would follow the contract in regard to interim increases.

Trial Examiner Hektoen: Is that Board's Exhibit 7?

Mr. Harrington: I was just going to inquire about that.

Q. I will show you Board's Exhibit 7. Is that the memo you referred to (handing exhibit to the witness)?

A. Yes, that is it.

Q. It is, you say? A. Yes.

Q. Did you attend any other conferences concerning that matter after that memo was published?

A. No. I attended the conferences, but they weren't *pretending* to my department and from time to time when that issue in the conference would come up possibly it would be turned over to the representative that was involved concerning his department.

Q. Now, on these people hired outside of the

(Testimony of Don D. Wilkerson.)

state, were those grievances presented to you? [157]

A. They were.

Q. And when were they presented to you?

A. Between January and March.

Q. Of what year? A. This year.

Q. And what were those grievances about?

A. In regard to wages.

Q. What were the circumstances?

A. Why, it seems as though men were hired in the east at a stipulated rate and on their arrival in San Diego they either couldn't find the job in the plant that they had hired them for or else in some cases they had put them on a job and told them they had misrepresented themselves and therefore they would have to cut their wages.

Q. After these grievances were filed with you what did you do about them?

A. I in turn presented them to Mr. Wiseman.

Q. And then what was done about them?

A. No action was taken on them.

Q. Did you do anything further about this matter?

A. After Mr. Wiseman's refusal to act on them we had had a previous agreement with the Labor Relations Department that all subjects would be referred to Dave Fleet, the chairman.

Q. Now, you say Wiseman refused to act on them. Can you tell me just what he did or what he said? [158]

A. He said that these men had misrepresented themselves and as far as the company was con-

(Testimony of Don D. Wilkerson.)

cerned they were paying them what they were worth.

Q. Was there any other conversation with Wiseman about that matter?

A. That was the meat of the conversation. There was much conversation pro and con.

I in turn told them that it was the union's stand that the company had dealt with the men directly without going to the bargaining agents or consulting the committee-man before cutting the man's wages.

Q. And what then was done about those cases?

A. They were referred to the general committee.

Q. What is the general committee composed of?

A. At that time Mr. Wiseman, Mr. Bowers and Mr. Dave Fleet as chairman. On the union's side it was Mr. Roy Brown, Mr. Perry, Mr. Phillips, Mr. Bruce and myself.

Q. When did these committees meet about this matter?

A. The committee met in March.

Q. And where was the meeting?

A. The Parts Plant.

Q. And have those individuals whom you have just mentioned, were they present at that meeting?

A. They were.

Q. What occurred at that meeting? Was that one meeting or [159] more than one meeting?

A. It was a number of meetings.

Q. It was a number of meetings and they were held when, did you state?

A. In March.

(Testimony of Don D. Wilkerson.)

Q. All the meetings were held in March?

A. Yes.

Q. What occurred?

A. Well, the union stated their position in regard to the men that had been hired out of town and their wages cut. We stated that we felt as if they had been discriminated against.

The company contended that they wasn't going to do anything about them. We in turn filed the case with the N. L. R. B. The very next day we went into conciliation service up here with Harry Malcom and reached an agreement the next afternoon after the case had been filed the day before .

Q. What was the agreement about?

A. In regards to an adjustment.

Q. Did you have any correspondence with anybody representing the company concerning what the agreement was?

A. With Dave Fleet, yes.

Mr. Harrington: Will you mark this, please, Mr. Reporter? [160]

(The document referred to was marked as Board's Exhibit No. 11 for identification.)

Q. (By Mr. Harrington): I show you a paper which I have had marked as Board's Exhibit No. 11 for identification, and ask you to identify that, please.

A. That is in regard to the settlement reached in the cases of the out of town workers.

Trial Examiner Hektoen: The letter is from whom and to whom?

(Testimony of Don D. Wilkerson.)

Mr. Harrington: The letter was addressed by Mr. Wilkerson to Mr. Fleet and is the agreement as set out therein—the agreement that was arrived at.

The Witness: That is it.

Q. (By Mr. Harrington): And what is that?

A. Ink marks.

Q. I notice figures set in here with ink alongside and some writing here in pencil. Can you identify that?

A. It merely sets up what the retroactive amount or how it will be arrived at—a later adjustment. A later adjustment was worked out between the foreman, myself and Mr. Larimore.

Those that we couldn't agree on I was to take back to Mr. Dave Fleet and he would adjust them himself. They were the ink adjustments that were made.

Trial Examiner Hektoen: Were those increases?
[161]

The Witness: Increases, yes.

Trial Examiner Hektoen: Who put the figures on the exhibit?

The Witness: I did.

Mr. Harrington: Mr. Riggs has completed the file by furnishing me three other documents and I will ask the reporter to mark them 11-A, 11-B, 11-C and 11-D for identification.

(The documents referred to were marked as Board's Exhibits No. 11-A, 11-B, 11-C and 11-D for identification.)

(Testimony of Don D. Wilkerson.)

Q. (By Mr. Harrington): Can you identify that?

Trial Examiner Hektoen: What is the number of it?

Mr. Harrington: This is Board's Exhibit 11-B.

Mr. Riggs: I will concede all of those letters is correspondence between the company and the union with reference to the 22 men.

Mr. Harrington: And they contain the agreement reached between the parties.

Mr. Riggs: Yes.

Mr. Harrington: Thank you very much. I wish to introduce these as Board's Exhibit 11-A, 11-B, 11-C and 11-D.

Mr. Riggs: Please identify the dates and from whom they are on the record.

Mr. Harrington: Board's Exhibit 11-A is a letter from [162] David Fleet, assistant to the general manager, to Mr. Wilkerson, and is dated April 6, 1942.

Board's Exhibit 11-B is a letter from Mr. Fleet, David G. Fleet, to Mr. Wilkerson, dated April 16, 1942.

Board's Exhibit No. 11-C is a letter from Mr. Wilkerson to Mr. David Fleet, dated April 21, 1942.

Board's Exhibit No. 11-D is a letter dated March 31, 1942, from Mr. Wilkerson to Mr. Wiseman, labor relations director. This letter is dated March 31, 1942.

Trial Examiner Hektoen: I take it your stipulation covers their being admitted in evidence?

(Testimony of Don D. Wilkerson.)

Mr. Riggs: Of course.

Trial Examiner Hektoen: They are admitted in evidence.

(Thereupon the documents heretofore marked for identification as Board's Exhibits Nos. 11-A, 11-B, 11-C and 11-D were received in evidence.)

BOARD'S EXHIBIT No. 11-A

Consolidated Aircraft Corporation
San Diego, California

6 April 1942

Aeronautical Mechanics Lodge #1125

I. A. of M. District No. 22

1054 Third Street

San Diego, California

Attention: Mr. D. D. Wilkerson

Dear Mr. Wilkerson:

We set forth below confirmation of our proposals concerning the 21 grievance cases enumerated in your letter of 31 March 1942 and discussed at our meeting on Friday, 3 April 1942.

On the following employees, it was agreed that the Company would pay these employees (in a lump sum) the difference between actual earnings and what they would have earned had they been paid the rate at which they were originally hired.

Name	Clock No.	Original Hire Rate	Rate Cut to
✓E. N. Breid	67-4718	.75	.50 25†
✓C. F. Kresin	67-4921	1.15	.95 20†✓
✓C. Montague	67-4950	1.15	.95 20†—
✓L. J. Oscars *	65-4018✓	.75	.65 10†

(Testimony of Don D. Wilkerson.)

✓J. M. Hazel	65-6346	1.00	.80	20†
✓G. Bonomolo	65-6186	.85	.60	35†
✓J. J. Taliaferro	65-6465	.90	.75	15†
✓E. U. Manion	65-6349	.95	.75	20†
✓H. H. Hovis quit	65-6202	1.05	.85	20†

*Pencil notation: What ever came out, Master Board.

†Ink notations.

On the following employees it was suggested that management and union representatives arrive at a mutual agreement as to the proper rate of pay for each man for the job he is now doing. Having agreed upon such rates, the Company would then pay to each man (in a lump sum) the difference between the amount he would have received at this agreed rate and the amount he actually received. It was further stated that if any of these employees was not satisfied with the rate mutually agreed upon by the Company and the Union, the Company would pay transportation costs for the return trip home.

Name	Clock No.	Orig. Hire Rate	Rate Cut to	Rate Foreman con- siders fair for present skill & job
✓F. Buffington	67-4050	1.15	.80	1.00 20† 35†
✓F. S. Allen	67-4964	.95	.88	.90 2†—
✓C. W. Williams	65-6102	1.00	.60	.80* 20†
✓W. L. Packer	65-6338	1.15	.82	1.05 13†
✓A. E. Martens	65-6021	1.05	.75	.88* 8†
✓F. Schroeder	60-2267	1.00	.60	.90 [95†]—
C. R. A'Neals	15-6181	1.05	.85	.98*[1.05†]
C. Murawski	12-4092	1.00	.90	.90*[95†]
✓G. L. Bonzel	65-6373	.95	.75	.88* 13†

*Denotes present rate.

†Pencil notations.

(Testimony of Don D. Wilkerson.)

Settlements proposed for the following special cases were as follows:

✓ F. J. Roby 67-4959

Before this man left the east we wired him as follows on September 9, 1941:

“Mr. Hickman has forwarded your application and we notice your employment as a radial drill press operator. In view of the facts contained in your application we do not consider you fully qualified for this work at the rate of pay stated and wish to advise that it may be necessary to readjust your rate of pay after your arrival.” C. H. Batchelder, Consolidated Aircraft Corp.

Mr. Roby replied on September 12, 1941, as follows:

“Your wire received. I am leaving for your place Saturday 13. I am confident that when you find out what I can do, and the amount of work I can turn out, that you will find your representative did not over rate me. I am willing to be governed by your decision after I arrive there. Yours truly, F. J. Roby.”

While there was a question as to whether any adjustment was in order for this man, the Company agreed to make up the difference between the amount he earned at the 80c rate to which he was cut on January 17, 1942 and what he would have earned at any new rate which can be mutually

(Testimony of Don D. Wilkerson.)

agreed upon. His foreman considers a rate of 85c as fair for his present skill and job.

Ira Skaggs 15-6054

This man quit on 2-27-42. The Union Committee-man was consulted at the time this man's rate was cut and he signed the change of status slip. The Company offered to pay Mr. Skaggs \$60 as return trip travel allowance because similar treatment was accorded other men who were terminated because they could not perform work to our standards.

L. Olsen 65-6249

This man quit on 3-11-42. It appeared that there were two misstatements on his grievance. The first was that he was cut to 88c an hour and received same up to the present time (grievance dated 2-16-42). Actually he was cut to \$1.01 an hour, which rate he received up until he left. The second misstatement was his statement that he left a job paying \$1.10 an hour, whereas his original employment application, which he made out and certified as correct, shows that he was receiving 92c an hour on his last job.

The Company offered to pay Mr. Olsen a special return trip travel allowance of \$100.

Computations covering the retroactive pay will

(Testimony of Don D. Wilkerson.)

be made when rates for the employees in the second list above have been mutually agreed upon.

Cordially,

CONSOLIDATED AIRCRAFT
CORPORATION.

DAVID G. FLEET,

Assistant to the General Manager.

DGF:mf

[Pencil notations on back of sheet.]

75-5-80

75-8-83

75-10-85

2nd 88✓—

3rd 98✓—

Leadman 1.06

Sup. 1.16

75c

BOARD'S EXHIBIT No. 11-B
(Copy)

Consolidated Aircraft Corporation
San Diego, California

16 April 1942

Aeronautical Mechanics Lodge #1125

I. A. of M. District No. 22

1054 Third Street

San Diego, California

Attention Mr. D. D. Wilkerson

Dear Mr. Wilkerson:

With reference to our letter of 6 April 1942, and

(Testimony of Don D. Wilkerson.)

in accordance with the understanding reached at our last meeting, we have completed computations covering retroactive payments, and the amount due each man is set forth below. These computations cover the period through 3 April 1942. Additional adjustments covering the period from 4 April through 24 April will be made in those cases where the amount shown is followed by an asterisk.

Clock Number	Name	Retroactive	Agreed Upon	
		Payment Thru 4-3-42	Present Rate	New Rate (Effective 4-25-42)
12-4092	Casmir Murawski	\$14.49*	\$0.90	\$0.95
15-6181	C. R. A. Neals	125.73*	.98	1.05
60-2267	Fred Schroeder	297.32*	.75	.90
65-4018	L. J. Oscars	103.89	.86	.91
65-6021	A. E. Martens	191.13*	.88	1.00
65-6102	C. W. Williams	256.24*	.80	.90
65-6186	Guiseppe Bonomolo	161.50*	.75	.85
65-6202	H. H. Hovis	131.99	Quit 4-1-42	
65-6338	W. W. L. Paeker	348.75*	.95	1.15
65-6346	J. M. Hazel	93.79	1.00	1.05
65-6349	E. U. Manion	106.29	.98	1.05
65-6373	G. L. Bonzel	104.50*	.88	.95
65-6465	J. J. Taliaferro	43.79*	.88	1.00
67-4050	Fredrick Buffington	137.57*	.93	1.03
67-4718	E. N. Breid	277.04	.75	.88
67-4921	C. F. Kresin	123.81*	1.08	1.18
67-4950	Cletus Montague	132.13*	1.08	1.15
67-4959	F. J. Roby	57.48*	.80	.90
67-4964	F. S. Allen	18.94*	.88	.95

It is my suggestion that the new rates be put into effect as of 25 April 1942. By so doing, the additional adjustments mentioned above can be computed at the close of the pay period on 24 April—and checks can be distributed shortly thereafter.

(Testimony of Don D. Wilkerson.)

If this is agreeable, please advise as soon as possible, so that the change of status slips can be forwarded to the Payroll Department by Wednesday noon, 22 April.

Cordially,

CONSOLIDATED AIRCRAFT
CORPORATION.

DAVID G. FLEET,

Assistant to the General Manager.

DGF:MN

BOARD'S EXHIBIT No. 11-C
(Copy)

Consolidated Aircraft Corporation
San Diego, California
Aeronautical Mechanics Lodge 1125
1054 Third Avenue
San Diego, California

April 21, 1942

Mr. David G. Fleet
Assistant to the General Manager
Consolidated Aircraft Corporation
San Diego, California

Dear Sir:

With reference to your letter of April 16, 1942 and in accordance with the understanding reached in past conferences, I have to this date contacted the below named men and have their approval to

(Testimony of Don D. Wilkerson.)

accept the retroactive checks and the rates agreed on in your letter of the above date:

Casmir Murawski	12-4092	E. U. Manion	64-6349
C. R. A'Neals	15-6181	G. L. Bonzel	65-6373
Fred Schroeder	60-2267	J. J. Taliaferro	65,6465
L. J. Oscars	65-4018	Fredrick Buffington	67-4050
A. E. Martens	65-6021	E. N. Breid	67-4718
C. W. Williams	65-6102	C. F. Kresin	67-4921
Guiseppe Bonomolo	65-6186	Cletus Montague	67-4950
W. W. Packer	65-6338	F. J. Roby	67-4959
J. M. Hazel	65-6345	F. S. Allen	67-4964

In the casee of H. H. Hovis, Department 65-6202, Laverne Olsen, Department 67, Ira Skaggs, Department 15-6054, it is the desire of this office that you forward the checks of the three above named men direct to their last known address.

Very truly yours,

AERONAUTICAL MECHAN-
ICS LODGE 1125.

(Signed)

D. D. WILKERSON,

D. D. Wilkerson

Business Representative.

DDW :ap

(cc: Messrs. W. M. Shanahan
J. S. Blakely
H. R. Wiseman
G. A. Bowers

(Testimony of Don D. Wilkerson.)

BOARD'S EXHIBIT No. 11-D
(Copy)

Consolidated Aircraft Corporation
San Diego, California
Aeronautical Mechanics Lodge 1125
1054 Third Avenue
San Diego, California

March 31st, 1942

Mr. Herman R. Wiseman,
Labor Relations Director,
Consolidated Aircraft Corporation,
Lindberg Field,
San Diego, California

Dear Sir:

We are herewith submitting the names of the men who were hired out of town, or out of state, and who were the subject of discussion at today's conference.

Mr. E. N. Breid, No. 67-4718.
Mr. Frederick Buffington, No. 67-4050.
Mr. Franklin J. Roby, No. 67-4959.
Mr. Carl F. Kresin, No. 67-4921.
Mr. Cletus Montague, No. 67-4950.
Mr. Frank Sanford Allen, No. 67-4964.
Mr. Louis J. Oscare, No. 65-4018.
Mr. C. W. Williams, No. 65-6102.
Mr. James M. Hazel, No. 65.
Mr. Guiseppe Bonomolo, No. 65-6186.
Mr. Jack J. Taliaferro, No. 65-6465.
Mr. W. L. Packer, No. 65-6338.

(Testimony of Don D. Wilkerson.)

Mr. E. U. Manion, No. 65-6459.

Mr. Arthur E. Martens, No. 65-6021.

Mr. Fred Schroeder, No. 60-2267.

Mr. Clyde R. A'Neals, No. 15-6181.

Mr. Casimir Murawski, No. 12-4092.

Mr. G. L. Bonzel, No. 65-

Mr. Ira Skaggs, No. 15-6054.

Mr. Harry H. Hovis, No. 65-6202.

Mr. Laverne Olson, No. 65-6249.

With kind regards, I remain,

Respectfully yours,

(Signed) D. D. WILKERSON,
B. A., Local 1125.

DDW/rb

Q. (By Mr. Harrington): In your capacity as business agent of the Union, Mr. Wilkerson, do you attend all conferences between the company and the union?

A. Practically all of them.

Q. At any of those conferences that you have attended was the subject of job classification and pay rates brought up?

A. It has been, yes.

Q. And at how many conferences was it brought up?

A. Practically all conferences since the first of the year [1963] up until the present time.

Q. Who was present during those conferences?

(Testimony of Don D. Wilkerson.)

A. Up until three months ago, or two months ago Dave Fleet, Mr. Bowers and Mr. Wiseman.

Q. Who has been present since that time?

A. I haven't attended them in the last two months.

Q. What was discussed at those conferences concerning job classifications and the rates of pay?

A. The union contended that the company had set up job classifications without consulting the union as defined by the board.

Q. Did you take the matter up with anyone connected with the company yourself?

A. Personally I had a conversation with Mr. Wiseman in regard to it. At that time he informed me that the company was setting it up but it hadn't been set up yet. If and when it was set up we possibly could set down together and work out our problem then.

I at that time, asked him for a copy of the classifications that were set up and he informed me that we would get a copy in due time.

Q. Did you take the matter up at any other time with Mr. Wiseman?

A. I corresponded with him by mail, informing him it was the desire of the union to set up committees for the purpose [164] of working out job classifications.

Q. About when did you do that?

A. That was in March, I believe.

Mr. Harrington: Will you mark this for identification, please, Mr. Reporter?

(Testimony of Don D. Wilkerson.)

(The document referred to was marked as Board's Exhibit No. 12 for identification.)

Q. (By Mr. Harrington): I show you a paper I have had marked Board's Exhibit No. 12 for identification and ask you if you can identify that?

A. Yes, that is it.

Q. What is the exhibit?

A. The letter to Mr. Herman Wiseman stating the desire of the union to set up joint committees.

Trial Examiner Hektoen: Dated when?

The Witness: Stating the desire——

Trial Examiner Hektoen: No, dated when?

The Witness: March 25. Stating the desire of the union to set up joint committees.

Mr. Harrington: I offer Board's Exhibit No. 12 for identification in evidence as Board's Exhibit 12. I do not wish to offer the writing at the bottom of the exhibit—just the body of the letter.

Trial Examiner Hektoen: Is there any objection?

Mr. Riggs: No objection. [165]

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked for identification as Board's Exhibit No. 12 was received in evidence.)

(Testimony of Don D. Wilkerson.)

BOARD'S EXHIBIT No. 12

March 25th, 1942.

Mr. Herman R. Wiseman, Labor Relations
Director,
Consolidated Aircraft Corporation,
Lindberg Field,
San Diego, California.

Dear Sir:

During the recent negotiations between the Labor Relations Committee of the Consolidated Aircraft Corporation and a like committee representing the Union; the question of bringing together duly authorized committees from our respective organizations for the purpose of discussing and setting up mutually agreed to job classifications and rates of pay pertaining thereto was discussed and agreed to in principle.

We are herewith signifying our desire, and we are requesting that you set up your committee to meet with our committee for the purpose of setting up and establishing job classifications and rates of pay covering all work now being done by employees eligible to membership in our organization.

These two committees designated to handle this very important matter should operate free from interference from any other committees; and devote all of their time to this one issue.

(Testimony of Don D. Wilkerson.)

Trusting that we may have an early reply to this communication and that we can mutually get into this task as quickly as possible, I remain,

Sincerely yours,

D. D. WILKERSON,

Business Representative,

Local 1125.

DDW/rb.

Marginal Notation—Via Bonding Mess, Copy has been sent to Mr. Walsh.

Q. (By Mr. Harrington) Did you receive any reply to that letter? A. Not to date.

Q. Not to date, you say?

A. (No response.)

Q. Have you handled grievances concerning pay since that time? A. I have.

Q. How many such grievances have you handled?

A. That would be hard to estimate.

Q. How many would you say?

A. Very many I would say.

Q. And when were those grievances handled?

A. Since the first of the year up until two months ago.

Q. And have you taken any up with the company? A. I have.

Q. With whom?

A. Mr. Wiseman and Mr. Vance.

(Testimony of Don D. Wilkerson.)

Q. What occurred?

A. In the adjustment of all grievances we find that wherever a top rate of pay is involved that there was no adjustment made. [166]

Q. Have you ever asked anyone representing the company for copies of these rates of pay and job classifications?

A. As before stated, I asked Mr. Wiseman on one occasion and he told me it would be forthcoming if and when the company had it set up properly.

Q. Well, have you ever received a copy of it?

A. Not to date.

Q. In your capacity as business representative of the union do you receive communications from the company? A. I do.

Q. Have you received any communications relative to asking employees to withdraw from the union?

A. I received one such communication in April. Mr. Wiseman and a man by the name of Prior—

Q. When did you receive this communication?

A. I am sure it was in April.

Mr. Riggs: Couldn't you shorten this by showing it to him and asking him if he received it?

[167]

Mr. Harrington: Will you please mark this for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 13 for identification.)

(Testimony of Don D. Wilkerson.)

Q. (By Mr. Harrington) I show you Board's Exhibit 13 for identification and ask you if that is the letter you are referring to?

A. That is the letter from Mr. Wiseman.

Q. And it is dated when?

A. February 20. (Handing exhibit to Mr. Riggs.)

Mr. Harrington: I offer Board's Exhibit 13 for identification in evidence as Board's Exhibit 13.

Trial Examiner Hektoen: There being no objection, it is admitted.

(Thereupon the document heretofore marked for identification was received in evidence and marked Board's Exhibit No. 13.)

BOARD'S EXHIBIT No. 13

(Cut)

Consolidated Aircraft Corporation
Lindbergh Field - San Diego California
Cable "Consair" P. O. Box 1950

February 20, 1942

Mr. Don Wilkerson
Business Representative, Lodge 1125
International Association of Machinists
1054 Third Avenue
San Diego, California

Dear Sir:

It has come to my attention that H. M. Prior, Assistant Foreman of Jigs and Fixtures Department, Plant #1, made a written request on Feb-

(Testimony of Don D. Wilkerson.)

ruary 9, 1942 for withdrawal from Lodge #1125. I also understand that you called him on the telephone and refused his request, upon the basis that he was not a general foreman.

You are aware that our contract contains no restrictions such as this, and that the National Labor Relations Board has defined Lodge #1125 as the bargaining unit for all hourly paid employees.

Since Mr. Prior does not come within this classification, it will be appreciated if you will immediately act upon his request.

Very truly yours,

CONSOLIDATED AIRCRAFT
CORPORATION

H. R. WISEMAN

H. R. Wiseman

HRW:LF

Labor Relations Director

[In pencil] Jan 1 1941

Q. (By Mr. Harrington) Have you received any communications from employees concerning resignations from the union? A. I have.

Mr. Harrington: Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit No. 14 for identification.)

Q. (By Mr. Harrington) I show you a paper I have had marked Board's Exhibit 14 for identification and ask you what that is? [168]

(Testimony of Don D. Wilkerson.)

A. I received this communication, although it is not addressed to me, but there is a notation on the bottom of it and it was turned over to me.

Q. The notation at the bottom says, "D. M.," does it not? A. Yes.

Q. Who is that?

A. That is me, and it is dated February 9. (Handing exhibit to Mr. Riggs.)

Mr. Riggs: The witness is referring to a letter dated the 9th of February, 1942, addressed to Lodge 1125 by H. M. Prior. I have no objection.

Trial Examiner Hektoen: It is admitted as Board's Exhibit 14.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 14.)

BOARD'S EXHIBIT No. 14

(Cut)

Consolidated Aircraft Corporation

Lindbergh Field - San Diego California

Cable "Consair"

P. O. Box 1950

9 February 1942

Lodge 1125

International Association of Machinists

1054 Third Avenue

San Diego, California.

Gentlemen:

Please be advised that I now hold the position

(Testimony of Don D. Wilkerson.)

of an Assistant Foreman with Consolidated Aircraft Corporation, and I am at liberty, in this capacity, to hire and fire persons under my supervision in the Jigs and Fixtures Department, Plant No. 1. I therefore tender my request for a withdrawal card from Lodge 1125 I.A.M. Your prompt action on this matter will be greatly appreciated.

Yours very truly,

H. M. PRIOR

bj

H. M. Prior

P. S. Don Please get in touch with me in regard to this matter. My phone extension is 431.

Thanks

PRIOR

Q. (By Mr. Harrington, continuing) Did you get in touch with Prior as he requested in the letter here?

A. I did, by telephone.

Q. And what was your discussion with him?

A. I asked him to come to the office—I wanted to talk to him.

When he come to the office, I told him that as far as the union was concerned, our constitution stated that he had to be a general foreman before he could have a withdrawal card out of the union. Otherwise he could just drop his [169] membership if he so desired.

(Testimony of Don D. Wilkerson.)

Q. And what did he say with reference to that matter?

A. He says that—he didn't state who, but he said certain individuals in the company told him that he would get along better if he didn't belong to the union in the capacity that he was in.

Mr. Harrington: I have no further questions.

Cross Examination

Q. (By Mr. Riggs) In these conferences about these 22 men that came up, as I take it on March 31st or March 30th, who were present? Mr. Fleet, Mr. Wiseman and Mr. Bowers for the company?

A. Yes; and Mr. Brown and Mr. Phillips and Mr. Bruce and Mr. Perry and myself.

Q. For the union? A. For the union.

Q. And those negotiations were carried on with Messrs. Fleet, Bowers, Wiseman after this talk that you had had or at least that you had been informed by either Mr. Laddon or Woodhead that they were going to represent the company in their labor relations? A. That is true.

Q. At this meeting that you say you had with Mr. Woodhead and Mr. Laddon in January, that was about all that was said at that meeting, wasn't it? [170]

A. I think there were four subjects taken up but that was the only one talked about.

Q. Mr. Woodhead was the new president, was he not—he had just come there, hadn't he?

A. Yes, sir.

(Testimony of Don D. Wilkerson.)

Q. Didn't he say that Mr. Fleet and Mr. Bowers and Mr. Wiseman were going to contact the union and you should have your negotiations with them?

A. He says, "From now on these three men here have got your answers. If you are not big enough to get those answers from them, don't come crying to me."

Q. That was all that was said at that conference, wasn't it?

A. That was his answer to our question, yes.

Q. I mean that was the subject of the conference, wasn't it?

A. That is true.

Q. At this conference where you took up the subject of the 22 men in the shape of a grievance, didn't Mr. Fleet say that this was the first he had heard about this matter?

A. Yes, I believe he did, but I had taken them up with Mr. Wiseman. Understand in this meeting with Mr. Woodhead and Mr. Laddon in the first part of January, and immediately following that, I had just went into office and started taking up these out of town workers' grievances with Mr. [171] Wiseman and it could be understood why Mr. Fleet didn't know anything about it.

Q. Well, you didn't get around to writing the company anything about it until Mr. Fleet asked you the names of the people that were involved and then you wrote him this letter of March 31st, which is Board's Exhibit 11-D, giving him the names of the persons who were the persons who

(Testimony of Don D. Wilkerson.)

were the subject of the conference, isn't that so?

A. That is true, I filed grievances on them.

Q. And he said he didn't know anything about it and to please let him know the names, didn't he?

A. The grievances were filed with Mr. Wiseman when *we taken* it up in the general conference the first time. Mr. Fleet had seen them. The grievances were carried into the general conferences and that was the first time Mr. Fleet seen them.

Q. Now, he said that he would look into it, didn't he? A. He did.

Q. Then you had some other meetings about it, didn't you? A. That is true.

Q. He refers in his letter of April 6th to something being discussed at the meeting of Friday, the 3rd of April, and that conference was the subject of these men who had been hired out of town, wasn't it? A. That is true. [172]

Q. Didn't Mr. Fleet say in substance at that conference, and I'm not trying to put anything in your mouth that he didn't say, but I do want to shorten this thing if I can. Didn't he say in substance, that they had investigated this matter and in some cases he thought that the company was at fault in that the men had been hired and there was no particular job that he could fill at the time he came there and that in other cases they found that the men who had been hired, for instance, as a lathe operator, at \$1.00 an hour was

(Testimony of Don D. Wilkerson.)

incompetent to operate a lathe when he got there and that the foreman had put him up on some other job at a lower rate of pay?

A. Mr. Fleet and the other two gentlemen on the committee stated definitely in the conference room at the part plant that they would not make an adjustment on these cases. Following that the cases were filed with the N. L. R. B. [173]

Q. What was discussed at this meeting of the 3rd, then?

A. The meeting of the 3rd——

Q. Let me refresh your memory. He says: We set forth the confirmation of our proposals concerning the 21 grievance cases. He must have made some proposals with reference to these cases, didn't he?

A. He made that on possibly the 29th or 30th, the first days of the conciliation service. The disagreement was reached the first day we went into conciliation service.

Q. So that the agreement to adjust these men was reached the first day you went into the conciliation service. Who had you had the talk with prior to that time?

A. The labor relations department: Mr. Bowers, Mr. Wiseman, Mr. Dave Fleet.

Q. As soon as Mr. Fleet got into it there was suggested that the management and the union representatives arrive at a mutual agreement as to the proper rate of pay for the job each man is now doing. Isn't that so?

(Testimony of Don D. Wilkerson.)

A. Mr. Fleet had been in it from possibly January 7 up until the time we went into conciliation service and knew about it.

Q. I am afraid I don't follow you. I thought you said Mr. Fleet came into these conferences on March 30th or 31st for the first time. Previous to that time you filed grievances with Wiseman and you made them subject to complaint [174] somewhere else.

A. I filed grievances with Wiseman; probably we wrangled back and forth for six or seven days, but reached no adjustment. It was decided we take them to the general conference.

Q. With Mr. Malcolm, you mean?

A. No. This was still the latter part of January, February. Originally it started out with 12 of these grievances. During this period from January up until the time they were settled, there actually is, possibly, 23 that has been settled at the present time. There was no adjustment made until the first day we went to conciliation service.

Q. When was that?

A. That was March. I think it was March 30th, it was sent into conciliation service.

Q. Then Mr. Fleet—at his request you wrote him the names of these men?

A. That is true.

Q. At some stage of this conference didn't Mr. Fleet say, on behalf of the company, in substance, what I have said: That in some cases he found the company was at fault, and in other cases, he

(Testimony of Don D. Wilkerson.)

found the man has misrepresented his capacity for the job for which he was hired?

A. Mr. Fleet said that after March 30.

Q. I don't care when he said it. Did he say it?

A. I say: He said it after March 30. [175]

Q. It took a long while to get that out of you. Next, didn't he say the company would proceed, in connection with the union and foremen, to evaluate each of the men and the work they were doing at that particular time?

A. He says: We will pay them retroactive pay, the amount of the difference between the rate we arrive at through negotiation and the rate we promised them at the time we hired them.

Q. Also, where a man had misrepresented his capacity, he was also to be evaluated and get whatever rate the foremen, union, and company agreed on?

A. That is true.

Q. That was done, wasn't it?

A. Yes, sir.

Q. And they did receive retroactive pay to a certain date, did they not?

A. They did.

Q. And that was settled to the complete satisfaction of the union, wasn't it?

A. That is true.

Q. After negotiation with the company?

A. After the union had taken the charges to the N. L. R. B., yes.

Q. With reference to this Prior letter of Exhibit 13 and 14, general foremen are not admitted to membership in the [176] union, are they?

(Testimony of Don D. Wilkerson.)

A. General foremen can still retain membership in the union, but if they wish withdrawal cards, the union will grant them.

Q. The union has usually taken the position that foremen, or persons that have the right to hire and fire are not appropriate members, haven't they?

A. We do not deny membership, but they have the privilege of taking a withdrawal card.

Q. The only difference between you and Mr. Prior at that time was as to whether he was a general foreman or assistant general foreman, isn't it?

A. The difference was whether he was a general foreman or an assistant foreman, not an assistant general foreman.

Q. He says that he was assistant foreman and he had the capacity to hire and fire persons under his supervision in jigs and fixtures department, Plant No. 1. What happened to his application for withdrawal?

A. No action was taken on it. Mr. Prior let his dues get delinquent, and he was automatically dropped from the union.

Q. And on the job classification complaint, you were told, were you not, that the company regarded these job classifications as guides? They hadn't been fixed as any fixed classifications?

A. From time to time they told me that was the yardstick [177] by which their foremen could govern their rates.

(Testimony of Don D. Wilkerson.)

Mr. Riggs: That is all.

Trial Examiner Hektoen: Wait a minute. Anything more, Mr. Harrington?

Redirect Examination

Q. (By Mr. Harrington) On these out of state hires, when these 22 men had been reduced in pay, was the union consulted before the men were reduced in pay?

A. Not to my knowledge.

Mr. Riggs: Pardon me. Will you read the question?

(The question was read.)

The Witness: The answer is: Not to my knowledge.

Trial Examiner Hektoen: How many men? Had they been reduced?

The Witness: They had been reduced.

Trial Examiner Hektoen: Had the union been consulted?

The Witness: No.

Q. (By Mr. Harrington) You spoke of matters taken up in general conference. What did you mean by that? You mean these boards representing the union and the company that you testified to? A. Yes.

Q. I wasn't clear on that matter.

I have no further questions. [178]

Recross Examination

Q. (By Mr. Riggs): On the hire of these 22 men from out of state, they were all in a rather

(Testimony of Don D. Wilkerson.)

high classification of machine work, weren't they?

A. They run anywhere from 60 cents an hour to \$1.50 an hour, were classified from—hired at a starting rate as inspectors, some of them up to machines hands at \$1.15 an hour.

Q. When this matter came up, didn't Mr. Fleet say they would give these people, if they wanted, fare back home, or would evaluate them here, just as they chose?

A. They come out in the original—what the original agreement I had with Mr. Fleet so states. The original agreement states that.

Q. They weren't all employed in one department in the plant, were they? A. No.

Q. They were scattered all through the entire plant?

A. I think they were employed in three different departments. There was one in 60, 65, and 67, was the only three departments I think involved.

Q. Were those departments that have anything to do with machining and operation of lathes?

A. 65 and 67 is a machine shop and tool room, and I believe 60 at that time was inspection. I am not positive about it.

Q. I didn't hear your last words. [179]

A. 60 at that time was inspection department.

Mr. Riggs: I have nothing further.

Trial Examiner Hektoen: That is all. Thank you.

(Witness excused.)

Trial Examiner Hektoen: We are in adjournment until 10:00 o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., September 1, 1942, an adjournment was taken until 10:00 o'clock a. m., Wednesday, September 2, 1942.) [180]

Conference Room
Chamber of Commerce Building,
San Diego, California
Wednesday, September 2, 1942.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock A. M.

[181]

Trial Examiner Hektoen: The hearing will be in order.

Mr. Harrington: Mr. Barnes. [183]

ARTHUR J. FISHER, JR.

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington): Give your full name to the reporter, please.

A. Arthur J. Fisher, Jr.

Q. And your address?

A. R. F. D. 1, Box 264 E. T., El Cajon, California.

(Testimony of Arthur J. Fisher, Jr.)

Q. Were you employed by Consolidated Aircraft Company? A. Yes, sir.

Q. When were you employed by them?

A. From December 18, 1939, until January 31, 1942.

Q. Are you a member of the union?

A. Yes, sir.

Q. How long have you been a member?

A. Since 1940 until the present time.

Q. Where had you worked before working for Consolidated Aircraft Corporation?

A. For General Motors Corporation.

Q. Where had you worked for General Motors?

A. In the Fisher Body plant in the city of Detroit.

Q. In what department had you worked in that plant?

A. In the efficiency department. [192]

Q. Did you ever, while you were connected with Consolidated Aircraft Corporation, make any suggestions about the operation of that plant?

A. Yes, sir.

Q. To whom did you make those suggestions?

A. To Mr. Kelly.

Q. When was that?

A. Early in 1940.

Q. What did you suggest?

A. Suggested they make clamps to hold angles in place on bulkhead boilers.

Q. Anything else?

(Testimony of Arthur J. Fisher, Jr.)

A. Also suggested that they start a foremen's school in Consolidated Aircraft so that there would be closer cooperation between the foremen and the workers.

Q. Was anything done about those suggestions, to your knowledge?

A. They have a foremen's school today; also, I was notified early in January of this year by Al Davis, the lead man in the spar section that they were using clamps that I suggested to hold angles in place on auxiliary spar parts.

Trial Examiner Hektoen: Who is Mr. Kelly?

The Witness: Mr. Kelly is plant manager of Consolidated Aircraft Corporation. I am not positive of his title today.

Q. (By Mr. Harrington): Did anyone connected with the company [193] ever speak to you about the union?

A. Yes, sir; Mr. Liegal, also Mr. Powell.

Q. Who is Mr. Liegal?

A. Mr. Liegal was my first foreman in Consolidated.

Q. When did he speak to you about it?

A. Early in 1940.

Q. Where?

A. In the sheet metal punch press department.

Q. Who was present when he spoke to you?

A. Just Mr. Liegal and I.

Q. What was this conversation? What was said?

A. This conversation come up after initiation at the Eagles Lodge. Mr. Liegal and I were talking

(Testimony of Arthur J. Fisher, Jr.)

about the job of lead man on the afternoon shift. Mr. Liegal told me if it wasn't for my union activities, he would be able to do something for me in procuring this job as lead man.

Q. Had you asked for that position?

A. I did, the day before, I asked Mr. Liegal for this job, when I found out they were starting an afternoon shift.

Q. What department were you working in at that time?

A. Punch press department.

Q. Did you receive this position of lead man?

A. No, sir, I did not.

Q. How long did you work in the punch press department?

A. From December, 1939, to June of 1940. [194]

Q. What happened then?

A. In June of 1940 they started the cowlings department out in the tent in the back yard, and I asked Mr. Liegal to transfer me out into this department as it was a new department, and Walter Borg, the lead man of this department, was a charter member of our local, and I thought I could get along with him better than being where I was.

Q. Were you transferred?

A. Yes, sir, I was.

Q. Did you work under Borg in that department?

A. Yes, sir.

Q. How long did you work in that department?

A. Until my discharge in July, 1940.

(Testimony of Arthur J. Fisher, Jr.)

Q. Were you discharged in July, 1940?

A. Yes, sir, I was.

Q. Was any reason given for your discharge by the company?

A. On the slip the company gave me it stated I was unqualified for work.

Q. Were you told why you were unqualified?

A. There was some scrap run three months previous to the date of my discharge which I had run on a press, closing the angle on a job, and this job was O. K.'d by my immediate lead man, Phil Raymond, also by the inspector, his first name was Art, of the department, and the crack did not show up until the parts were anadized.

Q. What sort of an operation is anadizing?[195]

A. It is one I don't know.

Q. Do you know when the anadizing occurred?

A. I do not. It must have been two or three months after the parts were run.

Q. Did you attend any meeting of the union where the matter of hours and overtime pay was discussed?

A. Yes, sir.

Q. When was that?

A. It was in the second Wednesday of the month of July.

Q. July of what year?

A. 1940.

Q. What happened at that meeting?

A. There was a letter came there asking that we work 40 hours per week before time and a half would be paid.

(Testimony of Arthur J. Fisher, Jr.)

Q. What were you then working?

A. We were working—our contract called for working eight hours a day, time and a half for over eight hours in any one day.

Q. Who was this letter from?

A. This letter was signed by Major Fleet, written by his secretary.

Q. Who was it addressed to?

A. It was addressed to Local 1125, our president at that time, Jack Waskey.

Q. How was the matter brought up at the meeting? [196]

A. It was read at the meeting by the recording secretary, and after it was read, Walter Borg made it as a motion. The meeting then adjourned from the small hall and moved downstairs to the large hall, to accommodate the men who were coming for this particular meeting.

Q. Then what occurred in the small hall?

A. I spoke first opposing this motion.

Q. What did you say, and do you recall the motion?

A. The motion was that we work 10 hours a day. What Major Fleet wanted to do was work 10 hours a day, four or five days a week, and we wouldn't get no time and a half until we had worked 40 hours. I put it to the fellows of the day shift meeting, that seen my way, and voted it down.

Q. What did you say at that meeting?

Mr. Riggs: I will object to that unless it was

(Testimony of Arthur J. Fisher, Jr.)

brought to the attention of some official of the company.

Trial Examiner Hektoen: What do you say, Mr. Harrington?

Mr. Harrington: He said that he opposed this motion and that the motion was in a letter from Major Fleet.

The Witness: Written and signed by Major Fleet. In fact, the letter could be looked up yet.

Trial Examiner Hektoen: Wait a minute. Your objection is, of course, based on the fact that nobody representing the company was there.

Mr. Riggs: Yes, sir. I think what he said, in any [197] event, is immaterial. He has already testified without objection, that he opposed the motion.

Mr. Harrington: That is sufficient.

Q. (By Mr. Harrington): You opposed the motion? A. Yes.

Q. We will let it rest there. When were you discharged, did you say?

A. July 1940, the first time.

Q. Did you do anything about your discharge?

A. I turned my discharge over to Brother Bentley, International representative of the Machinists Local.

Trial Examiner Hektoen: Let me ask you a question: Your opposition to the motion resulted in what?

The Witness: In my discharge.

(Testimony of Arthur J. Fisher, Jr.)

Trial Examiner Hektoen: What did the union do?

The Witness: At the present time?

Trial Examiner Hektoen: No, at that time.

The Witness: At that meeting?

Trial Examiner Hektoen: Yes.

The Witness: They voted the motion down.

Q. (By Mr. Harrington): You say they took your discharge up with Bentley?

A. Bentley, International representative of the Machinists Local, I. A. & M. of United States.

Q. What happened then? [198]

A. Brother Bentley and Brother Waskey, our then president, spoke to Mr. Kelly about it two or three times, and the last meeting with Mr. Kelly, I was called too.

Q. Who is Mr. Kelly?

A. Kelly was then plant manager.

Q. What happened at the last meeting?

A. Mr. Kelly said to give him a couple of days to think it over.

Q. Then what happened?

A. He called Brother Bentley, and Brother Bentley called me on the phone and told me to go to the employment office the next morning and be reinstated.

Q. Were you reinstated?

A. No, sir, I was rehired, in August, two weeks after my discharge.

Q. In what department?

(Testimony of Arthur J. Fisher, Jr.)

A. Into the wing department.

Q. Under whose supervision were you?

A. Jack Waskey.

Q. Have you ever held any position in the union?

A. Yes, sir.

Q. What position?

A. I was committeeman for the year 1941; also I was plant chairman of the parts department when we moved up there.

Q. When were you committeeman of—— [199]

A. Committeeman of the wing department, Department 19, later the 69 department.

Q. What were your duties as committeeman?

A. To take up all grievances with management and see if they could be settled in a satisfactory manner for the employee.

Q. Were you required in the performance of your duties to leave your job?

A. Yes, sir, I was.

Q. Did you make any provision about leaving your job?

A. Yes, sir, I did.

Q. What was that?

A. Immediately after I was elected committee-man in December of 1940, we took office in the first week of January, I went immediately to our then foreman, Steve Powell, and made arrangements with him——

Q. State what you said and what he said.

A. I asked him what he wanted me to do in case

(Testimony of Arthur J. Fisher, Jr.)

I would have to leave my job. He told me as—if he was at his desk to notify him where I was going, and if he was not there at his desk, to notify his clerks Don Kimball and Jimmy Innis, so that he would know where I was at all times.

Q. Have you followed that procedure?

A. I followed that procedure until my discharge in 1942.

Q. Did you have any further discussions with Powell around that time? [200]

A. Yes, sir.

Q. What was that?

A. Brother Powell and I talked—Steve Powell, I shouldn't call him "Brother," and I talked about the work I had done in General Motors, and I showed him lineups and charts of the procedure that I had helped set up in General Motors when connected with the efficiency department.

Q. Did you have any other conversations?

A. Brother Powell told me—I still get "Brother" in there; I wish you would keep that out—Steve Powell told me that if I would quit this union stuff, he would see that I would be advanced to a better position.

Q. When was that conversation?

A. I went to see Steve Powell this time to go to Mr. Waterbury's office.

Q. Can you place the time?

A. I don't know the exact date.

Q. What part of the year was it in, or what month was it in?

(Testimony of Arthur J. Fisher, Jr.)

A. This was in January of 1941.

Q. Was anyone else present?

A. No, sir.

Trial Examiner Hektoen: Who is Mr. Waterbury?

The Witness: Mr. Waterbury was personnel man for the whole plant. [201]

Q. (By Mr. Harrington): You say when you returned to work you went to work under Waskey. How long did you work under him?

A. This statement now—Brother Waskey was supervisor of the department, and I worked, there was three or four lead men under him; I want to explain this thoroughly. When I was called back to work, when I was rehired, I went to work for Waskey in the gas tank corners division. Later, when there were no gas tank corners and they couldn't get them, I was transferred, not transferred, because I was still in his department, but he sent me over to work in the bulkhead division, Mr. Mohr.

Q. About when was that?

A. That was in June, I think it was, late in 1940.

Q. Did Waskey give you any reason for doing that?

A. Mr. Waskey told me at that time that they couldn't get gas tank corners, which was a forging, an aluminum forging, so he sent me over to Bob Mohr's department as they had a lot of extra work to do at that time. [202]

(Testimony of Arthur J. Fisher, Jr.)

Q. And what did you do under Mohr?

A. I built the landing gear brace for the B-24's, the first ones that were built. Also built bulkheads when there were no landing gear braces to be made.

Q. How long did you work under Mohr?

A. I worked under Mohr until I went to work for Bill Larson, who was another lead man under Waskey who was in charge of the spar section.

Q. And do you recall when that happened?

A. What is that?

Q. Do you recall when that happened?

A. That was in—that was after we moved to Building No. 4. I don't remember the exact date.

Q. How long did you work there?

A. I worked under Bill Larson until my discharge in January of 1941.

Q. Were you acting as union committeeman all that time? A. Yes.

Q. And were you following the procedure that you had set up? A. Yes, sir.

Q. In your department? A. Yes, sir.

Q. Did anyone tell you you should not follow that procedure?

A. No, sir; not until December 13th. [203]

Q. Was the fact that you were following that procedure brought to the notice of any officials of the company? A. Yes, sir.

Q. When?

A. Brother Selvaggi of the hammer shop—brother Selvaggi of the hammer shop told the clerk

(Testimony of Arthur J. Fisher, Jr.)

in my department, Mr. Mineah, called his clerk and asked him if he could get in touch with me.

Q. When did this happen?

A. This happened——

Mr. Riggs: May I ask is all of this detail necessary?

Mr. Harrington: I think so, counsel.

Mr. Riggs: It is your case; go ahead.

Q. (By Mr. Harrington) When did it happen?

Trial Examiner Hektoen: When did it happen?

The Witness: This happened in December, in the first two weeks of December of 1941.

Q. (By Mr. Harrington) Who was Mineah?

A. Mineah was the foreman of the wing department.

Q. And what happened?

A. The clerk forgot to let me know that Selvaggi had called me and at our meeting on December 16th with management it was brought up as a grievance.

Q. Who was present at that meeting?

A. Steve Powell, Henry Golen. They were both assistant plant [204] managers of Parts Plant. Also Bill Larimore from the personnel department.

Q. And what occurred—who was present representing the union?

A. Also Brother Felton, our business representative, the plant committeemen of all departments, and myself.

Q. And what occurred at that meeting?

(Testimony of Arthur J. Fisher, Jr.)

A. At that meeting I was the chairman of the meeting and it was brought up there about this telephone conversation with the clerk and Mr. Powell made the statement that he allowed me to be called to the phone and also to leave my department at any time that I had to go because I had already made these arrangements previously with him.

Q. Who was Powell, or what was Powell's position? A. He was assistant plant manager.

Q. And was there anything else said at that meeting? A. (No response)

Q. Well, do you recall anything that was said?

A. I am puzzled as to the meeting. That is what I am thinking about.

Q. Were you working in the plant in December of that year, 1941? A. Yes, I was.

Q. Do you know T. M. McMahan?

A. Yes, sir; I do. [205]

Q. Is he an employee of the company?

A. Yes, sir; he works in the paint department.

Q. Did you have a conversation with him in December, 1941? A. Yes, sir.

Q. When was that conversation?

A. I returned to my work on the 13th day of December at about 3:15 and a fellow working with me told me that a painter was there looking for me. I had been to the toilet.

Q. Who had been to the toilet?

A. I had been to the toilet. And when I returned to my job this fellow working with me told

(Testimony of Arthur J. Fisher, Jr.)

me that a painter had been there looking for me while I was gone.

Q. What did you do then?

A. I ran over to the top of the steps, which was about 18 feet out of my department, through the tool room, to look down and see if I could see him. As I looked down the steps I seen this painter talking to Brother Harkins and also Brother Pyett.

Q. Who were Harkins and Pyett?

A. Brother Harkins was committeeman for Department 65, which is the tool room. Pyett was just elected president of our local at that time.

Q. What happened then?

A. I hollered to McMahan and asked him what he wanted and he waved this paper at me and I went down the stairs to see [206] what it was and I seen that it was a petition put out by the company asking men to work Sunday for nothing and also if they wanted pay to punch their clock card and work for time and a half.

Mr. Harrington: Will you please mark this for identification, Mr. Reporter?

(The document referred to was marked as Board's Exhibit No. 15 for identification.)

Q. (By Mr. Harrington) I show you Board's Exhibit No. 15 for identification and ask you if you have seen that before?

(Handing exhibit to the witness.)

A. Yes, sir.

Q. When?

(Testimony of Arthur J. Fisher, Jr.)

A. That is the petition that McMahan had.

Mr. Riggs: Why do you call it a petition? It looks to me like a notice.

Q. (By Mr. Harrington) Why do you call it a petition?

Trial Examiner Hektoen: That is a small matter.

The Witness: It was called a petition for the simple reason that they asked the men to sign it. This was the one that was on the clock and the one they sent out to sign had that written in small spacing. In other words, there was a narrow spacing on the typewriter at the top of the page and they wanted us to sign in under it.

Q. (By Mr. Harrington) As a matter of fact this is a copy, [207] is it not? A. Yes.

Mr. Harrington: This is a copy, Mr. Examiner.

Trial Examiner Hektoen: Do you offer it in evidence?

Mr. Harrington: Yes.

Mr. Riggs: No objection.

Trial Examiner Hektoen: Board's Exhibit 15 is admitted.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 15 was received in evidence.)

(Testimony of Arthur J. Fisher, Jr.)

BOARD'S EXHIBIT No. 15

(Copy)

Consolidated Aircraft Corporation
San Diego, California

13 December 1941

NOTICE TO ALL EMPLOYEES

In line with President Roosevelt's desire for a 7 day work week, those employees who volunteered to work Sunday without pay may do so. These men are not to ring their time cards. Other employees who signify in writing that they desire to work Sunday at time and one-half will ring their time cards and be paid accordingly. The above applies to certain jobs in Jigs and Fixtures, Tool Room, Machine Shop, Fuselage, Paint Shop, Sheet Metal, Metal Bench, Welding, and black out painting. No other departments will work.

I. M. LADDON

Works Manager

Q. (By Mr. Harrington) You say McMahan showed you the petition? A. Yes, sir.

Q. And what occurred then?

A. I told him, McMahan, that they could not negotiate with the company—oh, no, not negotiate—that the A. F. of L. held the agreement and contract with the Consolidated and anything that the

(Testimony of Arthur J. Fisher, Jr.)

workers discussed would have to be discussed through the Local.

Q. Were Pyett and Harkins present at that time? A. Yes, sir.

Q. And what did you do after talking to McMahan?

A. After talking with McMahan I went to the telephone in my department—returned to my department and went to the telephone and called Mr. Newman. Mr. Newman told me that he didn't know there was a petition in the Parts Plant but [208] he knew there was one in the Home plant and the workers had signed it.

Q. Did anything else occur in this conversation?

Trial Examiner Hektoen: Who is Mr. Newman?

The Witness: Mr. Newman was the plant manager of the Parts Plant.

Mr. Riggs: Of the Parts Plant?

The Witness: Yes, the Parts Plant.

Mr. Riggs: Mr. Examiner, you might understand that the Parts Plant is separated from the main plant by nearly a half mile.

Trial Examiner Hektoen: I so gathered.

Q. (By Mr. Harrington) What did you do then?

A. I told Mr. Newman that I would see him on my way out from work, because it was at that time about 3:25 and we quit at 3:30.

I returned to my department and put my tools away and went down to the foreman's desk to get permission from him to go and see Ted Stark, the man who was foreman over this painter.

(Testimony of Arthur J. Fisher, Jr.)

Q. What was Ted Stark's title or his position, do you know?

A. He is the foreman of the wood mill.

Q. And did you see Ted Stark?

A. Yes, sir. [209]

Q. Where did you see him?

A. I seen him approximately, maybe 28 minutes after 3:00 because the whistle blew while I was talking to him.

Q. And where did you see him?

A. In the wood mill.

Q. And what happened there?

A. After I had talked to Ted Stark I explained to him that he was not allowed to send out a petition and have workers sign it, and that it was against the Wagner Labor Act to do so, and also against our contract with the Consolidated Aircraft.

Q. What happened then?

A. I left Ted Spark's office to go to Mr. Newman's office. As I left Ted Stark's office Ted Stark got on his bicycle and started out, where to, I do not know.

Q. And what did you do—what did you do?

A. I continued on to Mr. Newman's office. On the way to Mr. Newman's office I heard them call on the loud speaking system for Ted Stark. As I passed the watchman's shanty between buildings 2 and 3 Ted Stark rode up and got off his bicycle and went in and talked on the telephone.

Q. Could you hear what he was saying over the telephone?

(Testimony of Arthur J. Fisher, Jr.)

A. I did not. I didn't go near him.

Q. Did you go on to Newman's office?

A. I continued right on into Mr. Newman's office. [210]

Q. What happened there?

A. As I entered the door to Mr. Newman's office, Mr. Newman said "Here is Fisher now, Ted, I will take care of him."

Q. Then what happened?

A. After he had hung up the receiver he turned to me and called me a slant-eyed Jap lover, a Hitlerite, or "What are you, a God damned Communist?"

Q. Was anyone else present at that time?

A. Mr. Newman's secretary and also a lead man named Smith who was lead man over the crane men was in his office.

Q. Was anything else said at that time?

A. Yes. Mr. Newman also stated to me that "Fisher, you are treading on thin ice; after the first of the year you are all done."

Q. Was there any other further conversation?

A. How is that?

Q. Was there any other further conversation?

A. After he said that I tried to explain to him.

Q. What did you say?

A. I said to Mr. Newman that "You know that this is a direct violation of the Wagner Act and also our contract," and he told me to get the hell out of there and stay out.

(Testimony of Arthur J. Fisher, Jr.)

Q. What were you referring to when you said that?

A. That this petition that they had put out asking the [211] workers to sign to work Sunday for nothing.

Q. Was there any further conversation?

A. That was all there was because I left then.

Q. At the time you worked for the company were there maintenance men and janitors employed?

A. Yes, sir.

Q. Where did these men work?

A. They worked in and out of the plant—maintenance of the plant and also keeping the yard clean.

Q. Did you attend any meeting with respect to those people?

A. When I was first elected committeeman in the Home plant I attended a meeting early in 1941 in Jim Kelly's office, the then plant manager, in the presence of Herman Wiseman, Bud Waterbury, Jim Kelly for management, Walter Chudleigh, president of our local, all the committeemen of the Home plant and myself.

Q. And what occurred at that meeting?

A. It was brought up—the question of the janitors working outside in the rain was brought up and Mr. Kelly stated "All men working in the rain in the maintenance department will be furnished with raincoats, boots and rubber hats, if it was necessary for them to work in the rain."

Q. Was this matter taken up again at any time?

(Testimony of Arthur J. Fisher, Jr.)

A. Late in 1941, in December—in fact, on December 16th at our meeting with management, committee meeting with manage- [212] ment, it was brought up.

Q. Who attended that meeting?

A. Brother Felton, our business representative, all the committeemen of the Parts Plant, and myself, I acting as chairman of the meeting.

Q. And what occurred at that meeting?

A. Mr. Powell, Mr. Golen and Mr. Larimore were present for management.

It was brought up here about the janitors working in the rain without raincoats or boots. Mr. Powell said that the men would be treated here as they are in the Home plant, that they would be furnished coats and boots if they were furnished them in the Home plant.

Q. Were they furnished boots and raincoats after that? . A. No, sir; they were not.

Q. How do you know?

A. Because on the first day of January, 1942, as I come in to work I passed where the janitors checked in their brooms and shovels in the morning, and a janitor stopped me and he was wringing wet from head to foot, and he told me that they had to work all night in the rain without raincoats or boots, or hats.

Q. Who told you that?

A. I do not recall the janitor's name.

A. Did you do anything about this? [213]

A. I told this janitor to see the committeeman,

(Testimony of Arthur J. Fisher, Jr.)

A. J. Slaughter, and explain to him and have Slaughter see me.

Q. Did you do anything else?

A. On my way upstairs to work I, as soon as I went up in my department, I met my then supervisor, Elmer Gaulbeck, and I explained to Elmer that I may have to leave my job that morning in regard to the janitors.

Q. What did Gaulbeck say?

A. Elmer said to me, "It is O. K. with me."

Q. And did anything else happen about this matter on that day?

A. That morning about 9:00 o'clock A. J. Slaughter came to me and asked me if I would go and speak to Larimore about it as to why the day shift janitors were made to work in the rain also.

Q. And what did you do then?

A. After he had talked to me I went to the clerk and asked him for a Rover's button.

Q. Who was the clerk you went to?

A. Don Kimball.

Q. And what do you mean by "a Rover's button"?

A. A Rover's button is a red button the size of this gentleman's button over here (referring to Mr. Riggs) only it has—it is a plain red button with a big "R" on it and you must have this button in order to leave your depart- [214] ment or to go from one building to another.

Q. You say you saw Kimball. Did you say he was a clerk?

(Testimony of Arthur J. Fisher, Jr.)

A. Don Kimball was Mineah's, our foreman's, head clerk.

Q. What happened when you saw Kimball?

A. He referred me to Petit.

Q. Who is he?

A. He is the other clerk—he is Kimball's assistant, and he told him to give me a Rover's button.

Q. Did you have any conversation with him?

A. I told him I had spoke to Elmer Gaulbeck and Elmer had given me permission to leave my job.

Q. And what happened then?

A. Then I received my Rover's button and Slaughter and I started for the personnel office. Slaughter said to me, "We better see Bill Gregory," the lead man of the janitors, before we went to the personnel office and explain to him what happened in this meeting with management on December 16th.

Q. Did you do that?

A. We started to see Bill Gregory through Building No. 2 from the Parts Plant. In the center of the building Mr. Newman, Mr. Powell, Mr. Golen were standing waiting on me to get to them.

Q. What happened then?

A. Mr. Newman stopped me and asked me where I was going. I told him where I was going. He reached up and snatched [215] the Rover's badge off of my shirt, tearing the shirt and said to me, "Who the hell give you that button? You get back on the job and stay there or out you go."

(Testimony of Arthur J. Fisher, Jr.)

Q. What happened then?

A. I returned to my job immediately.

Q. When you returned to your job what happened then?

A. I met my supervisor, Elmer Gaulbeck. When I went up the stairs he was standing at the top of the steps and he seen that I was mad and followed me over to my place of work and asked me what was the matter.

I explained to him the first time in my life that I ever left my job and failed to do my duty to the union and also to the workers was that time. I told him that Newman had told me to go back to my job and stay there.

Q. What happened then?

A. In a few minutes, a matter of maybe four or five minutes, Elmer Gaulbeck was called down to the foreman's desk by the clerk. The clerk, in my presence, told Elmer Glaubeck that George Newman wanted to see him at the foreman's desk.

Q. What occurred after that?

A. Gaulbeck went down to the foreman's desk and about five minutes later he returned and said, "Fisher, Newman wants you, too."

I went with Elmer Gaulbeck down to the foreman's desk and George Newman says, "Did you have permission from your [216] foreman, Mineah, to leave your job?" I said, "No, sir, I did not. I have followed the procedure that I have always used."

(Testimony of Arthur J. Fisher, Jr.)

George Newman turned to Mineah and told Mineah to make out "his time, he is all through."

Q. And were you discharged then?

A. I was discharged at 9:30 New Years morning of 1942.

Q. What had been your practice when you were obliged to leave your department?

A. Whenever I left my department I always done the same as all of the rest of the committeemen.

Q. What was that?

A. Go to the foreman's desk, and if the foreman wasn't there, notify the clerk of where I was going, so that if the foreman returned during my absence he would know where I was at.

Q. Did you receive telephone calls in the plant?

A. Yes, sir; I did.

Q. And what was the practice?

A. Many of them.

Q. What was the practice as to that?

A. The clerk would always call me to the telephone until after December, around the 13th—the middle of December—I think it was around the 13th.

Q. What happened at that time—what change was made? [217]

A. One morning about 9:00 o'clock Mineah came up to me and——

Q. Who do you mean?

A. Mineah, the foreman, and said to me, "You cannot use the phone to call in and out of the plant

(Testimony of Arthur J. Fisher, Jr.)

any more, and nobody can call you to the phone.”

Q. Had you received the permission before that time to leave?

A. Yes, sir; I had always received the permission from him and also from Steve Powell to leave the plant or leave the building, rather, or to leave my department.

Q. Was anything else said about that matter at that time?

A. A little while after Mineah talked to me Elmer Gaulbeck came to me and told me that I could not be called to the phone. Also my lead man, Bill Larson, told me the same thing during the day. I don't recall just what time it was.

Q. Where did they tell you that?

A. In my department at my place of work.

Q. And who was present?

A. Nobody, only the two of us, whoever one it was, Gaulbeck or——

Q. Did you stay in your department after that?

A. I did up until, oh, I don't know—it was in January, no, it was on December 29th. Now I remember it was on December 29th. I went to the foreman's desk to get permission [218] to go to the personnel department.

Q. And who did you see at the foreman's desk?

A. I seen Mr. Mineah.

Q. And what happened at that time?

A. Brother Harkins and Thomas of Department 65 wanted to go to the personnel department to find out about a man's vacation pay and as plant chair-

(Testimony of Arthur J. Fisher, Jr.)

man I had to go with them and they came there and we went to the foreman's desk. They were with me when I got the Rover's badge from Mr. Mineah's clerk.

Q. Who is Harkins and Thomas?

A. Harkins and Thomas were committeemen of Department 65.

Q. You say you got a rover's button from the clerk? A. Yes, sir.

Q. Did you see the foreman that day?

A. Yes, Mr. Mineah gave me the button—he had the clerk give it to me, rather.

Q. Did you leave your department at any other time after that?

A. Oh, I left my department several times during the month of December, and went in twice or three times with Chudleigh and Felton, our business representatives on grievances into Larimore's office. Also was in conference with Brother Felton and committeemen from the maintenance department with a man named Bowers, who was—I don't know, [219] industrial relations director or something for Consolidated. He was newly appointed to that job and I had sent a letter to Major Fleet and it was referred to him.

Q. And what procedure did you follow in leaving your department?

A. Any time that I left I always went to the clerk or the foreman, if he was at the desk, or the assistant foreman and received permission to leave my department.

(Testimony of Arthur J. Fisher, Jr.)

Q. And was anything said about that?

A. No, sir.

Q. At any of those times?

A. Only this one time. Whenever I was leaving Larimore's office with Brother Harkins and Brother Thomas and they walked on and Mineah said to me, Mr. Mineah said to me, the foreman in my department—just give me time to think about it. As we left Larimore's office Mr. Mineah was coming down the hall and he stopped me and said to me, "I thought I told you not to leave your department."

I said, "I had permission from Steve Powell and I have always regarded that with you and with Mr. Powell—" that is wrong. "Anyhow, I always notified your clerk or you if you was there that I was leaving and I notified your clerk where I was going and came in here with Brother Harkins and Brother Thomas." There is a lady present so I won't say just what he said, but he did turn to me and say—— [220]

Q. Tell what he said.

A. I told him Mr. Kelly gave us permission whenever I was down at the home plant, to leave the department and come to his office or to the personnel office, and I says: I always tried to go through with that, as I had agreed with Steve Powell to do, by notifying the clerk, and Mr. Mineah said to me: I don't give a God damn what Mr. Kelly told you; Kelly's not running this plant, and you will do as I say or get out.

(Testimony of Arthur J. Fisher, Jr.)

Q. Did you do anything about that?

A. Yes, sir. I wrote a grievance sheet out and presented the duplicate to Brother Felton, our business representative, and it was brought up at the management meeting with the union.

Mr. Harrington: Will you mark this as Board's next exhibit for identification?

(The document referred to was marked as Board's Exhibit No. 16 for identification.)

Q. (By Mr. Harrington) I show you a paper I have marked Board's Exhibit No. 16. Can you identify that?

Trial Examiner Hektoen: That is your grievance, isn't it?

The Witness: Yes, sir.

Q. (By Mr. Harrington) Is this your signature on it? A. Yes, sir.

Q. Did I understand you to say you presented that grievance to the management? [221]

A. Yes, they were presented at our management meeting; for the management was Mr. Golem, Mr. Powell——

Q. Did you present this paper?

A. Yes, sir, that was presented at that meeting, a grievance was brought up at that meeting.

Q. Did you retain it, or what, I mean, after you presented it?

A. Brother Felton had the duplicate of this copy and I kept this copy in my file, as chairman of the plant. I was chairman of the meeting, and

(Testimony of Arthur J. Fisher, Jr.)

any grievance that was brought up at meetings of the management was kept.

Mr. Riggs: May I ask a question about this?

Mr. Harrington: Surely.

Mr. Riggs: What is the date you say you made this out?

The Witness: That was in the month of December.

Mr. Riggs: There isn't any date on it.

The Witness: The management meeting was on the 16th day of December.

Mr. Riggs: When was it this grievance you put forth on this form took place, this conversation? What date?

The Witness: When Mineah talked to me?

Mr. Riggs: Yes.

The Witness: The exact date I don't know.

Q. (By Mr. Harrington) Do you recall what part of the year it was? [222]

A. I don't remember the exact date, what date it was.

Trial Examiner Hektoen: Presumably it was during December, wasn't it?

The Witness: It was early in December; it was right previous to the meeting, I know that.

Trial Examiner Hektoen: To the meeting on the 16th?

The Witness: Yes.

Mr. Riggs: Identifying this for the record: This purports to be a grievance form, undated, name: Arthur J. Fisher, in pencil signed A. J. Fisher.

(Testimony of Arthur J. Fisher, Jr.)

Mr. Harrington: I offer that in evidence as Board's Exhibit No. 16.

Trial Examiner Hektoen: Any objection?

Mr. Riggs: I object to that as immaterial.

Trial Examiner Hektoen: It will be admitted.

(Thereupon the document heretofore marked for identification was received in evidence and marked as Board's Exhibit No. 16.)

BOARD'S EXHIBIT No. 16

Grievance Form

Aeronautical Mechanics Lodge 1125 I. A. M.

San Diego

Date.....

Name—Arthur J. Fisher

Address—3670 Keating St. City—San Diego

Dept.—69 Rate of Pay..... Previous Dept.—19

Rate of Pay..... Years Service—2 Clock

No. 34195 Shift—Day Foreman—Minieah

Lead Man—Larson How Long Worked on Present Job—18 months

Description of Present Duties.....

Grievance Statements by Mr. Minieah. Fisher you will have to stay on the job from now on. “—”

What is wrong now I notified your clerk I was going into see Mr. Newman & Mr. Laramar with two Com from Dept #65. I am allowed this time I think if you find it out. I know I was allowed this time in the home plant by Mr. Kelly. “Min” I don't give a God Dam what Kelly allowed you you are not at the home plant now & if you do it again I will fire

(Testimony of Arthur J. Fisher, Jr.)

you. “—” Now Min don’t get hot cool of & we can talk this over. “Min” I am hot & I will not cool of if you do it again you will hunt a new job.

A. J. FISHER

Signature

Shop Committee.

Office:

Time Rec’d

Date Rec’d.....

Date Presented.....

Date Concluded

Result

Date of Notification of Result.....

—

Q. (By Mr. Harrington) You say you presented that grievance at the December 16th meeting?

A. Yes, sir.

Q. What happened at that meeting?

A. At this meeting?

Q. Who was present at that meeting?

A. Mr. Powell, Mr. Golem, two assistant plant managers, [223] and Mr. Larimore, personnel man.

Q. Was anyone else present?

A. Brother Felton, all the committeemen of the parts plant, and myself, I acting as chairman of the meeting.

Q. What occurred at that meeting with respect to this grievance?

(Testimony of Arthur J. Fisher, Jr.)

A. In respect to this grievance it was brought up, the grievance was brought up, and I read it, and Mr. Powell made the statement he would talk to Mineah and put him on the right track.

Q. Was anything else said?

A. Mr. Powell says: He and I always get along together and he had agreed to let me do certain things, and he would see I continued to do them.

Mr. Harrington: You may examine, Mr. Riggs.

Trial Examiner Hektoen: We will take a short recess before the cross examination.

(Short recess.)

Mr. Harrington: I have another question or two I should like to ask.

Trial Examiner Hektoen: Very well.

Q. (By Mr. Harrington) Mr. Fisher, did you engage in any union activities other than you have testified to while you were an employee of the company?

A. When I first went to work at Consolidated in the punch [224] press department, under the contract at that time we couldn't do any organizing during working hours, but I used to talk to the men at noon, also in the mornings, before we went to work, and I used to contact them after we left the shop in regard to belonging to an organization of some kind which would be either union, to benefit their conditions in this country of ours.

In other words, raise your living standards.

I showed them the benefits of the unions.

Q. How often did you do this?

(Testimony of Arthur J. Fisher, Jr.)

A. At every opportunity I had except during working hours. I always done my work and stayed on my job.

Q. How long did that continue?

A. All the time I was in the punch press department and I had every man in there in the union.

Q. Did you engage in any other union activities?

A. Not exactly, only the organization of that particular department, but I used to talk to other men in other departments, and also tried to get them to do the same thing I was doing in my particular department.

Q. How many men were in that department?

A. Oh——

Mr. Riggs: Which department do you mean?

Q. (By Mr. Harrington) The punch press department.

A. Punch press department and bench department was all one; [225] it was all under Hank Liegal, and I will say there was 300 men in that department.

Mr. Harrington: I have no further questions.

Cross Examination

Q. (By Mr. Riggs) When you went to work for the punch press department in December, 1939, that was in plant No. 1, was it not?

A. Yes, sir.

Q. That was before the opening of the parts plant?

(Testimony of Arthur J. Fisher, Jr.)

A. It was before building No. 2 was ever built at the home plant.

Q. And the foreman was Mr. Liegal, and was your lead man Mr. Edward Raymond?

A. Yes, sir.

Q. During the time you were in that department didn't Mr. Raymond reprimand you a good many times? A. No, sir.

Q. Not at all? A. Never.

Q. Didn't he ever tell you you must not leave your punch press and the department without permission? A. No, sir.

Q. Hadn't you ever left your department without permission?

A. I had never left my punch press at any time during working hours. [226]

Q. And you had not engaged in union activities on company time during that time?

A. No, sir, I did not.

Q. You swear to it?

A. Yes, I absolutely will.

Q. And that Mr. Raymond never reprimanded you for being lax in your work, or leaving your punch press or your department without permission? A. No, sir, he never did.

Q. Did Mr. Liegal ever reprimand you for being lax in your work or leaving the department without permission? A. No, sir, he did not.

Q. Not during the time you were in the punch press department? A. No, sir.

Q. Didn't Mr. Liegal tell you Mr. Raymond had

(Testimony of Arthur J. Fisher, Jr.)

made complaints to him that you had broken a die and attempted to conceal the fact from the lead man?

A. No, sir. I never broke a die at Consolidated.

Q. Didn't Mr. Liegal tell you that at Mr. Raymond's request he was transferring you to the cowl-ing department?

A. No, sir, he did not. I asked for the transfer.

Q. Didn't Mr. Liegal tell you the request had been asked for in the hopes your work would improve? A. No, sir, he did not. [227]

Q. Then you went to work for Walter Borg, who was lead man in the cowl-ing department, didn't you? A. Yes, sir.

Q. Walter Borg was a member of the union, was he not? A. Yes, sir.

Q. Did he ever reprimand you for being lax in your work or leaving your department?

A. No, sir. I never left my department while I was working for Walter Borg.

Q. Did Mr. Borg tell you he had asked for your transfer, that you be removed from his department? A. No, sir, he did not.

Q. You were removed from his department and transferred elsewhere, weren't you?

A. No, sir, I was not.

Q. You were discharged, however by Mr. Liegal on July 26, 1940? A. Yes, sir.

Q. And that discharge was based upon, as I

(Testimony of Arthur J. Fisher, Jr.)

think you stated, upon your slip, that you were unqualified? A. Yes, sir.

Q. Then, after talking about this with Mr. Bentley, who was the grand lodge representative, and Mr. Jack Waskey, they took up your discharge with Mr. Kelly? A. Yes, sir. [228]

Q. Mr. Jack Waskey was president of the union, wasn't he? A. Yes, sir.

Q. At that time you had no union position, did you? A. No, sir.

Q. Did Mr. Waskey tell you that your reinstatement had been agreed upon providing Mr. Waskey would take you back into his department and guarantee your behavior in the future?

A. He didn't make that statement to me.

Q. Did you ever hear him make that statement to anybody? A. No, sir, I did not.

Q. You say he never told you he was to be responsible for your staying on the job and not leaving the department in the future?

A. No, sir, he did not.

Q. Mr. Walter Borg was also a union shop committeeman, wasn't he? A. Yes, sir, he was.

Q. And it was, as such, his duty to investigate grievances?

A. Yes, sir. May I say something in there though?

Q. I will ask you questions. Mr. Waskey was not only the president of the union, but he was chairman of the union shop committee, wasn't he?

A. Yes, sir.

(Testimony of Arthur J. Fisher, Jr.)

Q. He is now foreman of the PB-2-Y3 primary assembly? A. That I don't know. [229]

Q. Didn't he tell you that he had tried you under several lead men and found you an unsatisfactory worker, and he finally requested Robert Mohr, a lead man in the wing department, to give you a chance in his department?

A. He didn't tell me that, no.

Trial Examiner Hektoen: Is that supposed to be Waskey?

Mr. Riggs: Yes.

Q. (By Mr. Riggs) At the time of your reinstatement didn't he tell you that?

A. No, sir, I didn't work for Mohr. Furthermore, I wasn't reinstated. Please don't use the word. I was rehired. The company still owes me two weeks' wages; they haven't paid it yet.

Q. Did Mr. Waskey not tell you several lead men had complained to him that you were an unsatisfactory worker and that he had finally requested Robert Mohr to give you a chance in his department, and that you were transferred to his department upon Mr. Waskey's statement he would be responsible for your conduct?

A. He didn't make that statement to me.

Q. Did he make any one of those statements at all? A. No, sir.

Q. So far as you knew, your rehiring was based entirely upon no condition whatsoever that Mr. Waskey would look out for your conduct in the future? [230]

(Testimony of Arthur J. Fisher, Jr.)

A. No, sir, not to my knowledge. I don't need no guardian.

Q. You became a union committeeman when?

A. In December of 1940, I was the committeeman for 1941. I was elected at the election.

Q. All during 1941; and as union committeeman you kept abreast of all the bulletins that were published by the company, did you not?

A. Yes, sir.

Q. You are familiar with this one of the 23rd of July, 1941, signed by G. J. Newman, parts plant factory manager?

A. Yes, sir, I have a copy of that in my personal records.

Mr. Riggs: I offer in evidence as Consolidated's No. 2——

The Witness: Mr. Newman also——

Mr. Riggs (Continuing): ——memorandum to shop personnel, subject: Leaving the department, signed: J. G. Newman, parts plant factory manager.

(The document referred to was marked as Respondent's Exhibit No. 2 for identification.)

Trial Examiner Hektoen: Have you any objection?

Mr. Harrington: We have no objection.

Trial Examiner Hektoen: It will be admitted.

(Thereupon the document referred to, heretofore marked for identification, was received in evidence and marked Respondent's Exhibit No. 2.)

(Testimony of Arthur J. Fisher, Jr.)

RESPONDENT'S EXHIBIT No. 2

(Copy)

No. 1

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
Parts Plant
23 July 1941

Memo to: Shop Personnel

Subject: Leaving the Department

With the exception of those men who have been duly designated by their Foreman for contact work between the Home Plant and the Parts Plant, no one is permitted to leave their department without the permission of the Foreman in charge. Unauthorized departure or aimless wandering about the buildings of the Parts Plant will be cause for immediate dismissal.

G. J. NEWMAN (Signed)

G. J. Newman

Parts Plant Factory Manager

Q. (By Mr. Riggs) After your rehiring you went to work [231] under Mr. Robert B. Mohr, who was then a lead man in the wing department plant too, did you not?

A. No, sir, I did not.

Q. Who did you work for?

A. I worked for Bill Jensen.

Q. Wasn't Robert B. Mohr the lead man in the department?

A. No, sir, Bill Jensen was acting as lead man.

(Testimony of Arthur J. Fisher, Jr.)

Q. Where was Robert B. Mohr?

A. He wasn't in the department where I was working when I was rehired.

Q. When did you work for Robert B. Mohr as lead man?

A. After I had been back about two months, three months.

Q. After you had been back about two months, then you went to work in the department for which Robert B. Mohr was lead man?

A. Yes, sir.

Q. How long did you work for him?

A. Until they started the new department; I couldn't state. I don't recall just how long.

Q. Would you say about five or six weeks?

A. I wouldn't say.

Q. Months?

A. No, sir; longer than that, but I don't recall just now; until they started this new department.

Q. While you were working with Mr. Mohr, didn't he [232] reprimand you on various occasions for leaving the department without his permission?

A. No, sir, I never left the department, only with permission of the supervisor, Mr. Waskey.

Q. You state Mr. Moore never at any time while you were in that department reprimanded you for leaving without his permission?

A. I didn't have to have Mr. Mohr's permission.

Q. Answer my question: Did you have such a conversation——

(Testimony of Arthur J. Fisher, Jr.)

A. I answered your question, my dear friend. I said I didn't have to have his permission.

Trial Examiner Hektoen: You haven't answered the question. Did he ever reprimand you for leaving the department?

The Witness: Not for leaving my job, he didn't.

Q. (By Mr. Riggs) Do you make a distinction between leaving the job and leaving the department?

A. Yes, I do. I went to Mr. Kelly's office one time to show him some clamps I made to hold the angles.

Q. Did Mr. Mohr at any time while you were in his department reprimand you for leaving your job without his permission?

A. I didn't have to have his permission. I still say: No.

Q. Did he ever reprimand you for leaving the department without his permission? I will ask you that again. [233]

A. I still didn't have to have his permission.

Q. Is your answer no? A. No.

Q. Did Mr. Mohr tell you that you should stop a habit that you had of telling everybody how to do their work, and how it should be done?

A. I never told anybody how much work or how to do their work.

Q. You never interfered with other fellow workers, telling them how to do the job?

A. Never interfered; I have often showed men how to work up a job, to do it easier, to do more

(Testimony of Arthur J. Fisher, Jr.)

work in one day that we did before. I never held up production. I advanced production.

Q. Did Mr. Mohr ever reprimand you while you were in the department, stating that various men in the department complained because you were interfering with them and bothering them while they were doing their work? A. No.

Q. He never did? A. No.

Q. Not at any time. We have got to the latter part of 1941 and of all the foremen and lead men you have worked under, none ever complained about you?

A. I didn't work under Mohr in the latter part of 1941. [234]

Q. Let me state the question again: You started out working for Raymond and Liegal; then you got under Mr. Walter Borg; then you transferred to somebody else when you were rehired, for a couple of weeks. Who was that?

A. When I was rehired?

Q. Yes, for the first two or three weeks.

A. I worked more than two or three weeks for Bill Jensen. I worked a couple of months until he ran out of gas tank corners.

Q. Did you then transfer to Mohr?

A. It is all in the same department.

Q. You were under Mohr for how long a time? Five or six weeks? A. More than that.

Q. None of these men at any time, whose names I have mentioned, have had conversations with you in which they spoke to you about leaving the de-

(Testimony of Arthur J. Fisher, Jr.)

partment without permission? This had never been brought up?

A. No, sir, they didn't have nerve enough. They are like a lot of people.

Q. That's enough. That's your answer.

Did Mr. William Larsen, while you were working for him, ever tell you to lay off telling the men around you how to perform operations?

A. Yes, sir. [235]

Q. Did he tell you he would have to correct the men for performing operations in the way you told them how to do it? A. Yes, sir.

Trial Examiner Hektoen: I missed that somewhere. Who is Mr. Larsen?

Mr. Riggs: Mr. Larsen was lead man in the wing department, No. 69, plant No. 2, at the time of his rehiring.

Q. (By Mr. Riggs) Was he not?

A. No, sir.

Q. What was he, then?

A. I was rehired in Plant No. 2.

Q. Tell me who Mr. Larsen was and what department it was. The examiner wants to know.

A. I want to know if I have to answer all the questions that he is supposed to have the answer for.

Trial Examiner Hektoen: Yes, you do. Who is Mr. Larsen?

The Witness: Mr. Larsen was lead man in the spar division in the parts plant, in Department 69.

(Testimony of Arthur J. Fisher, Jr.)

Q. (By Mr. Riggs) And the foreman of that department was who?

A. The foreman of the department, when we moved up there, was Mr. Steve Powell.

Q. Did Mr. Steve Powell ever have any conversations with you about leaving your department?

[236]

A. Yes, sir.

Q. While you were under his jurisdiction?

A. Yes, sir.

Q. What was that conversation?

A. That is my testimony right there now. I told that before.

Q. I would like to hear it again.

Did he tell you you couldn't leave without his permission?

A. No, sir. Steve Powell gave me, when I was first elected committeeman, in the first week of January, '41, permission to leave my department by notifying him or his clerks, Don Kimball or Jimmy Innis at any time he wasn't there at his desk, so he would know where I was at any time I wasn't on my job.

Q. How long were you under Steve Powell?

A. Until Mr. Mineah was brought on days and made foreman of the wing department in the parts plant. That exact date I do not know.

Q. I will show you another bulletin dated the 26th of August, 1941, signed: G. J. Newman, parts plant factory manager, and ask you if you saw that when it was published. A. Yes, sir.

(Testimony of Arthur J. Fisher, Jr.)

Mr. Riggs: I offer that in evidence as Consolidated's Exhibit No. 3. [237]

(The document referred to was marked as Respondent's Exhibit No. 3 for identification.)

Trial Examiner Hektoen: Is there any objection?

Mr. Harrington: No objection.

Trial Examiner Hektoen: It is admitted as Respondent's Exhibit 3.

(Thereupon the document referred to, heretofore marked for identification, was received in evidence and marked Respondent's Exhibit No. 3.)

RESPONDENT'S EXHIBIT No. 3

(Copy)

No. 5

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
Parts Plant
26 August 1941

Memo to: All Department Heads

It has been noted recently that men in some departments are being lax about starting and quitting. A three minute warning whistle is provided which allows the men ample time to report to their jobs and be ready to start work. At quitting time at night, the men are rushing the clocks in an attempt to punch out at 5:30 as if their very life depended upon it. These practices must be discontinued.

(Testimony of Arthur J. Fisher, Jr.)

A great number of men are roving the shop during working hours. Some have legitimate reasons for doing so, while others are merely sight-seeing. Bright red buttons are being issued to the foremen, who will see each man leaving the department is supplied with one, who will return same when mission is completed. With the exception of the below named departments, any man found out of his department without one of these "roving" buttons will be sufficient cause for dismissal:

Mechanical Maintenance—Department #61.

Electrical Maintenance—Department #61.

Stock and Material Chasers—Department #58.

Receiving and Shipping Clerks—Department #58.

Janitors—Department #83.

G. J. NEWMAN, (Signed)

G. J. Newman

Parts Plant Factory Manager.

GJN:nr

Q. (By Mr. Riggs): Respondent's Exhibit No. 2 of July 23, 1941 stated that no one was permitted to leave his department without permission of the foreman in charge. You are familiar with that?

A. Yes, sir.

Q. And that unauthorized departure or aimless wandering around the buildings be cause for immediate dismissal?

A. Yes, sir.

(Testimony of Arthur J. Fisher, Jr.)

Q. After that bulletin was published did you at any time leave your department?

A. Yes, sir.

Q. And you want the Court to understand that every time you left your department you had permission of the foreman?

A. This—may I answer the way I want to answer?

Q. You may answer any way you want to.

A. This was brought up; I immediately went to George Newman [238] on that when they put it on the board and asked him if that included me and the other committeemen in the plant, and he said: No.

Q. In other words, he told you that it didn't apply to committeemen?

A. No. We had arrangements made with the foreman what to do, previous to this being out. This was put out in 1941. We had arrangements back as far as 1939, what to do.

Q. The next one of August 26th applied to committeemen as well as to anybody in the plant, did it not?

A. No, it did not.

Q. About Rover's buttons? A. Yes.

Q. You had to have a button to leave your department, did you not?

A. Yes, sir, Rover's buttons.

Q. In other words, to obtain a button you had to have the permission of the foreman?

A. No, sir.

(Testimony of Arthur J. Fisher, Jr.)

Q. It says here: Bright, red buttons are being issued to the foremen, who will see each man leaving his department is supplied with one, who will return same when the mission is completed.

A. Yes, sir.

Q. Was that brought to your attention? [239]

A. Yes, sir.

Q. Did you go to the foreman?

A. We didn't have to go to the foreman. If the foreman was there, we went to him.

Q. That was your interpretation of this: That you didn't have to go to the foreman?

A. No, sir, that was my agreement with Mr. Steve Powell the first week in January of 1941 when I was elected committeeman.

Q. The first week of January of 1941 was some eight months prior to publication of this bulletin in August, 1941, was it not?

A. Steve Powell was assistant plant manager at this time, and I asked him if that stood for the committeemen and the plant chairman, which was myself at the time, and he says: "No." He says: "You continue to do the same thing you have done in the past, follow the same procedure."

Q. That was when the July bulletin was published?

A. All of them; I have went to him for every one that was issued.

Q. You did tell him about this one, and he told you this didn't apply to you or anybody?

A. Yes; it didn't apply to committeemen or the

(Testimony of Arthur J. Fisher, Jr.)

plant chairman; they were to follow the same procedure as they had [240] been doing, which we have done at all times, to see the foreman or the foreman's clerks.

Q. What department were you in in December of 1941 when you were out of your department at that time? A. December of 1941?

Q. Yes.

A. I wasn't out of my department in 1941. 1941? When I was out of my department I was working for Bill Larsen, Elmer Gaulbeck was my supervisor.

Q. Prior to your dismissal, that was in July, 1940? A. Yes, sir.

Q. When this question came up about time or overtime, and the union received a communication from Major Fleet about changing the terms of the agreement, and you opposed it in the union agreement—— A. I was what?

Q. You opposed it in the union meeting.

A. Yes, sir.

Q. Wasn't there a few people who spoke for it?

A. Yes, sir.

Q. There was some division of opinion about it, wasn't there? A. Only one or two.

Q. Was any reason given by Major Fleet as to why he thought the change might be made? [241]

A. Yes, he gave a reason.

Q. What were his reasons?

A. Whose reasons?

Q. Major Fleet's.

(Testimony of Arthur J. Fisher, Jr.)

A. Major Fleet's reasons?

Q. Yes.

A. He wanted to work us 40 hours a week so he wouldn't have to pay us time and a half in any one day. He wanted to work us 10 hours.

Q. Didn't he think that would speed up production?

A. No, he didn't think it would speed up production; he still don't want to.

Q. You are sure about it?

A. Quite sure.

Q. This petition, as you call it, this bulletin, I think you stated they wanted men to work on Sunday without any pay whatsoever.

A. December 13, 1941.

Q. Yes. A. Yes, sir.

Q. You didn't read that part that anybody who wanted time and a half could have it?

A. Anyone that wanted time and a half could punch the time clock, and anybody that didn't could work for nothing.

Q. That applied to only five or six departments out of [242] 80 or 90, didn't it?

A. I don't quite get you.

Q. That referred to men in certain departments only? A. No, it didn't.

Q. What did it refer to?

A. It went plantwide.

Q. As I remember it, I thought it only went to a few departments. Are you sure about it?

(Testimony of Arthur J. Fisher, Jr.)

A. It went plantwide. I am sure about it.

Q. You thought that was an attempt to violate the union agreement? A. I knew it was.

Q. The fact that war had been declared on December 7 had nothing to do with any suggestion of a change? A. No, it hadn't.

Q. Or the President's request that production be speeded up to seven days a week?

A. The President didn't request what was on that bulletin.

Q. At the time Mr.—I want to have you give the Examiner the exact location of your position in your department on December 13. You were in the parts plant, and will you tell him how many buildings that consisted of?

A. The parts plant? I worked in the north end of the building, No. 3. I would say approximately 100 feet from the north end of the building. [243]

Q. Were you on the ground floor?

A. No, sir, I was in the second balcony.

Q. On the second balcony.

Where were you when you met Mr. Newman?

A. Mr. Newman? In Mr. Newman's office.

Q. I think you stated somebody brought to you a petition that had been handed to somebody and said that Ted Stark had asked him to sign it. Is that right? A. No, sir, I didn't.

Q. Do you remember making an affidavit with reference to this matter, verified June 24, before Notary Edward L. Sickels?

A. An affidavit of what?

(Testimony of Arthur J. Fisher, Jr.)

Q. With reference to your discharge, the history of the relations with the company.

A. Will you read the affidavit? Do you have it here?

Q. Yes.

A. Could you read it so I know what's it all about?

Q. I am asking you if you made such an affidavit. A. On what date is this? [244]

Q. You made an affidavit sworn to and subscribed by you, on June 24, 1942, before Mr. Edward L. Sickels, as a basis of a complaint to the Labor Board, did you not?

A. "Sickels"? I don't even know who the man is. I can't think of who Sickels is. Who is Sickels?

Q. Sickels was the notary public.

Trial Examiner Hektoen: Do you remember making such an affidavit about that time?

The Witness: Could I hear the contents of the affidavit, some of it, so I can jog my memory. After all——

Q. (By Mr. Riggs): Well, don't you remember whether you made an affidavit or not?

A. I have made so many.

Q. Regardless of its content?

A. I have made and signed so many since the first day of this year it is pitiful, and I have copies of them all, but I would like to know a few words, so I can jog my memory.

Q. Look through your copies and see if you have one of June 24.

(Testimony of Arthur J. Fisher, Jr.)

A. I have nothing to do with anything that is in here—I don't know.

Q. I thought you said you had copies of all the affidavits.

A. I have—I don't carry everything with me.

Q. You haven't got them with you today?

A. No, sir. I have no reason to have them. I have my [245] mind and I can make use of it.

Q. So you don't know whether you made this affidavit or not?

A. I can't think of who Sickels is.

Q. On the 13th of—

A. I signed affidavits—

Q. On the 13th of December tell me again what happened, will you? You were on the second mezzanine floor at your job in your building, Building No. 3, about 100 feet from the north entrance, and what happened?

A. At approximately 3:15 on December 13th I returned from the toilet and the fellow working with me said to me, "Fisher, a painter was just here looking for you." I says, "Where is he?" He says, "He just went down the stairs."

In order to get to the stairs I had to leave my department and go through about 18 feet of what is called the tool room in order to get where I could see down the stairs. And I did so. And I seen a painter, namely, McMahan, at the foot of the stairs talking to Brother Harkins and Brother

(Testimony of Arthur J. Fisher, Jr.)

Pickett, the president elect of our local and also the committeeman for Department 65. I called——

Q. They were down at the foot of the stairs leading up to the mezzanine?

A. At the foot of the first mezzanine stairs. In other words, one flight of stairs, about 25 steps from where I was [246] standing.

Q. Well, are there two mezzanine floors there?

A. Yes, sir.

Q. And yours is on the——

A. I was on the second.

Q. Your job was on the second and they——

A. They were on the first.

Q. They were on the first between the second and ground floor? A. Yes, sir.

Q. Then what happened?

A. McMahan held this sheet of paper up and showed it to me and I went down the stairs to see what it was, and he showed it to me, and he asked me what he should do about it and I told him that he could not sign it and not to sign it because it was in direct violation of our agreement and also in direct violation of the Wagner Labor Relations Act.

Q. Then where did you go?

A. I returned to my department.

Q. When did you next leave your department?

A. I left my department at about 28 minutes after 3:00. Quitting time was 3:30.

Q. Where did you go then?

(Testimony of Arthur J. Fisher, Jr.)

A. When? At 28 minutes after 3:00?

Q. Yes. [247]

A. At 28 minutes after 3:00 I started down—I went down, rather, not started. I went down the stairs to the foreman's desk and the foreman or his clerks were not there and I thought in order to see Ted Starck, the painters' foreman before he got out of the plant that I had better contact him before the whistle blew.

Q. Now, where was Ted Stark's department?

A. Ted Stark's office was in the wood mill.

Q. Now, where was the wood mill?

A. The woodmill was at the north end of Building No. 3.

Q. In the same building in which you were?

A. No, sir.

Q. Was it the adjacent building?

A. The building right next to it, on the north end of it.

Q. Right next to it?

A. Right north of building No. 3.

Q. Was the woodmill department on the ground floor or on the mezzanine floor?

A. It is all one. I don't remember—I know his office is up in a little balcony they have built there.

Q. And that is where you went to see Ted Stark, at the office up on the little——

A. Balcony.

Q. ——balcony built above the ground floor?

A. Yes. [248]

(Testimony of Arthur J. Fisher, Jr.)

Q. Was he there?

A. Yes, sir; he and his clerk Phoffenberger.

Q. At that time did you have a rover button?

A. No, sir.

Q. Had you spoken to your foreman about leaving your department?

A. At the time I went up the stairs to see Ted Stark the quitting whistle had blew so, therefore, I was on my own time.

Q. On your own time? A. Yes.

Q. Did you believe that you had permission to go anywhere around the plant you wanted?

A. Well, I didn't think I was doing anything wrong. I wasn't told I was doing anything wrong by doing something on your own time. If I want to stop and talk to you outside of the gate I was always allowed to do so, or inside the gate.

Q. You had not asked either the foreman or his clerk for a rover button on that occasion?

A. They weren't there.

Q. Now, after talking with Stark where did you go?

A. I went—started to Mr. Newman's office and as I rounded Building No. 3 I heard them speaking—

Q. That is, you came out of the building? [249]

A. I said as I rounded the corner—went around the northwest corner of Building No. 3, to make it specific, so you know what it is, I heard on the speaking system they were calling for Ted Stark.

As I went by the watchman's shanty, which was

(Testimony of Arthur J. Fisher, Jr.)

between Buildings No. 2 and 3 Ted Stark on his bicycle rode up to the watchman's shanty and went in and used the telephone.

Q. Where did you go?

A. I went into Mr. Newman's office.

Q. Where was his office?

A. Mr. Newman's office was in the new administration building.

Q. That is up in the Parts Plant?

A. Up in the Parts Plant.

Q. And the administration building is, to some extent, parallel to buildings 1, 2, 3, and 4, up there?

A. The administration building sets directly west of Building No. 2 of the Parts Plant.

Q. Where was Mr. Larimore's office?

A. Mr. Larimore's office was in the south end of the main floor, in the southwest corner of building—of the administration building.

Q. At the Parts Plant? A. Yes, sir. [250]

Q. Now, when you got into Mr. Newman's office he made some remarks about wondering whether you were a Jap lover or had slant eyes, you say?

A. Yes, sir.

Q. And what else did he say? Did he say that you had been out of your department continuously all the while you had been in the employ of the company?

A. He didn't even say anything. He was so—he was so dumbfounded to think that somebody caught up on him that he had no words in his mouth to say.

(Testimony of Arthur J. Fisher, Jr.)

Q. He did not say anything about you having been out of your department? A. No.

Q. Every department you had been in?

A. No, he didn't say nothing—he couldn't say nothing.

Q. He just simply said you were treading on thin ice? A. Yes, he said that.

Q. And that you were going to get out of there?

A. "After the first of the year, Fisher, you are all through." That is what he said.

Q. And who was there? Did he say—strike that out. Did he say that you had better watch your step in the future?

A. No, he didn't say that. I told him, if you want the exact words, I will give you just what he said because he said it—because I am not going to forget it as long as I [251] live. George Newman said to me, no, just skip that a minute.

As I entered George Newman's office George Newman was talking to Ted Stark on the telephone. The reason why I know this is that he said in his conversation, before hanging up the receiver, "Fisher is here now, Ted; I will take care of him."

He hung up the receiver and wheeled around in his chair and looked at me and says, "What the hell are you? A slant eye Jap lover, a Hitlerite or a God damned Communist?"

Q. Did he add anything to that?

A. After saying that he said—I said to him, rather, "George, you know you are in wrong and

(Testimony of Arthur J. Fisher, Jr.)

how are you going to defend yourself?" I said, "You are violating our contract with the company and you are violating the Wagner Labor Relations Act, and you know it or you wouldn't be plant manager." That is what I said to him.

He says, "Fisher, you know you are treading on thin ice. It is a short while to the first of the year. The first of the year you are all done."

I said to George Newman, "If that is all you can say, all you have to say I am sorry that we are in this plant," and I walked out when he said to me, "You get the hell out of here and stay out."

Q. And he was angry, was he not? [252]

A. We both were but I could keep my head and he couldn't.

Q. Did you talk to him as calmly as you are talking now?

A. Brother I can do it any time.

Trial Examiner Hektoen: Well, did you?

The Witness: Yes, sir; I did.

Q. (Mr. Riggs, continuing): Now, on January 1st with relation to the janitors, are you sure that this question had been taken up and that the company had agreed they were going to be supplied with rubber boots and coats and hats?

A. When?

Q. I say, are you sure that it had been taken up previously to January 1st with the company, and that Mr. Kelly, you think, said, or had agreed that the janitors were going to be supplied with rubber coats and boots and hats?

(Testimony of Arthur J. Fisher, Jr.)

A. Early in the first part of 1941 Mr. Kelly made that statement in the Home plant. Brother—no, he ain't no Brother, but Waterbury wrote it down on a piece of paper and notified the maintenance department to buy as many coats as necessary to cover men working in the rain.

Q. Well, how did it happen?

A. I sat there and watched him write it.

Q. How did it happen they were not bought between the early part of January, 1941 and——

A. I don't know.

Q. ——and December, 1942? [253]

A. I don't know—I can't answer that question.

Q. Doesn't that refresh your recollection that the matter had been taken up and decided exactly the other way; that the company was not going to supply the janitors with rubber coats?

A. It seems that they didn't in the Parts Plant, anyhow—they didn't do it.

Q. And when this matter of janitors on January 1, 1942 came up, was it raining—was it raining on January 1, 1942?

A. New Years day?

Q. Yes. A. It really was raining, yes.

Q. As part of the California climate?

A. No, it is not the climate—we love it.

Q. Then the first time you heard about it—heard any complaint of the janitors was when Mr. Slaughter came to see you, is that right?

A. No, sir. The night—a night janitor told me on my way into work and showed me the man

(Testimony of Arthur J. Fisher, Jr.)

walking around soaking wet and the shoe soles off of his shoes, taken off by the water—worked 8 hours in the rain.

Q. And Mr. Slaughter came to see you about it?

A. I told this janitor to tell the committeeman, Mr. Slaughter, to write up a grievance and see me.

Q. I am trying to shorten this up. Didn't Mr. Slaughter [254] come to see you about it at your place of work? A. Yes.

Q. And was your place of work the same on January 1st as it had been the other time?

A. Yes.

Q. On the second mezzanine floor of Building No. 3, did you say? A. Yes.

Q. About 100 feet from the north end?

A. Yes, sir.

Q. And he came to see you about it?

A. Yes, sir.

Q. Then what happened?

A. When Slaughter came to see me I had already got permission at that time—I got it at 7:00 o'clock that morning from Elmer Gaulbeck.

Q. Now, you say you got permission from Elmer Gaulbeck. Who is he—is he a supervisor?

A. He was my supervisor—he was supervisor over me. I worked for him.

Q. Did you ask him for permission in writing?

A. Not in writing.

Q. To leave your department?

A. Not in writing, no, sir.

(Testimony of Arthur J. Fisher, Jr.)

Q. Did you ask your foreman for permission to leave the [255] department either orally or in writing?

A. I didn't see the foreman. Nobody seen him that morning.

Q. You did not see him, anyway?

A. He wasn't there.

Q. Did you ask the—did you ask his assistant, the assistant foreman?

A. The assistant foreman—I didn't see him either.

Q. So that the only person that you spoke to at all about leaving your department on that occasion was Gaulbeck?

A. Was Elmer Gaulbeck, the highest man in the department that could be found.

Q. Then you went over to the clerk. What was the clerk's name? A. Don Kimball.

Q. Wasn't there another clerk there?

A. Yes, sir.

Q. Are you sure you spoke to Kimball?

A. Yes.

Q. Wasn't it Pickett you spoke to?

A. No. I spoke to Don Kimball and he referred me to Pickett.

Q. Did you go over to Pickett and tell him you had the foreman's permission to leave?

A. No, sir. I told him that Bill—that Elmer Gaulbeak had given me permission to leave; that I had talked to him [256] at 7:00 o'clock in the morning.

(Testimony of Arthur J. Fisher, Jr.)

Q. And did the clerk hand you a rover's button?

A. Yes, he did.

Q. Upon that statement?

A. Yes, he did.

Q. So that the clerk handing you a button depended on your telling him that Elmer Gaulbeck had granted you, orally, permission to leave the department upon that occasion?

Mr. Ryan: I think this is argumentative.

Trial Examiner Hektoen: In any event, he handed you a button on your telling him that you had Gaulbeck's permission?

The Witness: Yes, sir.

Q. (By Mr. Riggs): And you had nothing in writing?

Mr. Ryan: I object to that as immaterial.

The Witness: Nothing.

Mr. Ryan: I don't think there is any showing that it was necessary.

Trial Examiner Hektoen: Well, you didn't have anything in writing?

The Witness: No, sir; it wasn't necessary.

Q. (By Mr. Riggs): After you had the rover's button where did you go?

A. I started for the personnel department.

Q. And where was that? [257]

A. In the southwest corner of the administration building.

Q. That was across the yard from your building?

(Testimony of Arthur J. Fisher, Jr.)

A. No; right next to Building No. 2. It is kind of cater-corner.

Q. There is a space in between?

A. Yes, sir.

Q. How far away was it?

A. Oh, around 250 or 300 feet, I guess.

Q. And where did you meet George Newman and Mr.—who else was with him, Mr. Powell?

A. In the center of building No. 2.

Q. When you came out of building No. 3, you didn't go straight across the yard to the administration building, did you?

A. No, it was raining too hard.

Q. You went on down through building No. 2?

A. Yes, sir.

Q. How long a building is that?

A. The same length, approximately, as the administration building. By going to the south end of Building No. 2 you can walk right across in a hurry into Larimore's office.

Q. And it was in the middle of building No. 2 that you met Newman and Powell and Henry Golen?

A. Yes, sir.

Q. The three of them? [258]

A. Yes, sir. In fact, they were waiting on me.

Q. They were waiting on you? A. Yes, sir.

Q. How do you mean that?

A. I think somebody had let them know I was coming.

Q. Somebody in your department?

A. That is my supposition of the thing.

(Testimony of Arthur J. Fisher, Jr.)

Q. Well, no matter what your supposition is, you met the three of them as you were walking down the aisle of that building? A. Yes, sir.

Q. And you said that Mr. Newman took your rover's button off and asked you "Where the hell did you get that"?

A. He snatched it off. He didn't take it off. He snatched it off, pulled it right off of my shirt.

Q. Did he ask you at that time whether you obtained permission of your foreman——

A. No, sir; he did not.

Q. Not at that time? That was a later time?

A. "Where the hell did you get that rover's button."

Q. That was all he said?

A. That was all he said.

Q. And to go back to your job?

A. Asked me where I was going.

Q. What did you say? [259]

A. I told him that I was headed to see Mr. Gregory, the lead man of the janitors and from there into the personnel office to see Mr. Larimore in regard to the janitors working in the rain.

Q. And that was all that he said: "Where the hell did you get that button" and snatched it off of you? A. Yes, sir.

Q. And "Go back to your job"?

A. And the question he asked me, "Where I was going?"

Q. Then where was it you were fired? When

(Testimony of Arthur J. Fisher, Jr.)

you were called into the office—were you fired in his office?

A. Approximately 9:30 in my own department at the foreman's desk.

Q. And at that time he asked you whether you had had the permission of the foreman to leave your department and you said no?

A. That is right. That was the only question he asked me. Nothing else.

Q. Now, didn't you have a rover's button all the while? A. No, sir.

Q. Didn't part of the time you were employed in the plant you have a rover's button? Remember, you are under oath. A. What do you mean?

Q. Hadn't you gotten a rover's button at one time and kept it? [260]

A. No, I never kept one. I had—I got a button from Steve Powell—Steve Powell, when we first went to the personnel I was the only man that had a rover's button when we got it fixed up there.

Q. Did you return the rover's button every time you finished the mission?

A. Yes, sir. I used to give it to them every night. I may keep it all day long but I give it in at night, but I had given it back to Jimmy Ennis or another man in the office.

Q. And there was never—there never was any occasion when you kept the rover's button all the while so you could put it on whenever you left the department? A. No, no.

(Testimony of Arthur J. Fisher, Jr.)

Q. Never anything like that?

A. No reason for it. I could get one any time I wanted it. Why should I want one?

Q. I am asking you was there any—was there a time when you had a rover's button in your possession all the time? A. And I said no.

Q. And a rover's button that your foreman did not know about? A. No.

Q. You are sure about that?

A. We had no foreman when I had the one from Mr. Powell. [261] You ought to remember that because we had no foreman up there for the first month or two up there.

Q. Didn't Don Kimball ask you at one time how you came to have a rover's button that wasn't issued by his department? A. No, sir.

Q. You are sure of that?

A. Oh yes, yes. I had a rover's button. I was taking it back in. I wanted to let him know where I was going. Yes, sir, positively, I had a button from Steve Powell. That was before Mineah was our foreman—before we had a foreman.

Q. Didn't he ask you where you got the button and didn't you tell him it was none of his business?

A. No, sir; I did not. I am still a gentleman.

Q. Didn't Kimball tell you that he had instructed Picket never to issue a rover's badge without a written permission?

A. No, sir; didn't tell me that.

Q. Didn't tell you that?

A. No; he had no reason to tell me that.

(Testimony of Arthur J. Fisher, Jr.)

Q. Did Mr. Mineah have any conversation with you about leaving your department to go to Mr. Larimore's office?

A. Spoke to me, yes, when I was leaving Larimore's office one time.

Q. Well, I mean didn't he—I didn't ask you that, whether he spoke to you when you were leaving Larimore's [262] office. Didn't he have some conversation about your going to Larimore's office?

A. He asked me why I had to go in there when I would ask him for a rover's button.

Q. Wern't there occasions when you left the department to go to Larimore's office and never showed up at Larimore's office? A. No, sir.

Q. Didn't Mr. Mineah tell you on several occasions when you said you were going to leave your department to go to Mr. Larimore's office, and he found out afterwards that you did not show up there? A. No, sir.

Q. You are sure of that, too, are you?

A. Yes, sir; I am positive.

Q. Didn't you ask for permission sometimes to leave the department to attend some meetings in Mr. Larimore's office?

A. Grievance meetings, yes, sir. [263-4]

Q. And did you always show up at those meetings?

A. Yes, sir.

Q. There was never any occasion when you asked for permission to go to Mr. Larimore's office that you didn't actually go there, and not go somewhere else instead?

(Testimony of Arthur J. Fisher, Jr.)

A. No, sir; no necessity; any time I wanted to go to Mr. Larimore's office I stated I wanted to go.

Q. You don't get the purport of my question. Didn't you give as an excuse that you wanted to go to Mr. Larimore's office, to get out of the department, to get permission to go in and go out?

A. No, sir, I never did that. I had no reason to.

Q. You are sure you had a conversation with Mr. Gaulbeck on January 1, however, about leaving the department on that day?

A. 7:00 o'clock; yes, sir. In fact, well——

Q. Were you there at the meeting when Mr. Gaulbeck and Mr. Mineah went to Mr. Newman's office on January 1?

A. What was the question?

Q. Were you present at the occasion when Mr. Mineah, your foreman and Mr. Gaulbeck, your supervisor, were at Mr. Newman's office on January 1?

A. If they were in Mr. Newman's office I know nothing about it.

Q. You were not there anyway? [265]

A. No, I don't know even of them going there. It must have been after I was fired.

Q. I think you will find it was before. Did Mr. Larimore tell you at many occasions when you came to see him that you were wasting time on a lot of trivial matters?

A. He made those statements, yes.

Q. And sometimes didn't you bring people to see him in the plant about grievances?

A. Yes, sir.

(Testimony of Arthur J. Fisher, Jr.)

Q. And on some occasions didn't these people say: Well, we are sorry to waste time on these trivial matters, but Fisher got us to come down here?

A. No, they didn't make those statements. I didn't make grievances out; the committee makes the grievances out and bring them to me. My duty is to present them.

Trial Examiner Hektoen: We will get along faster if you will just say: No. Is that right?

The Witness: Right.

Q. (By Mr. Riggs) Can you give me an example of an occasion when Mr. Larimore told you he thought you were wasting your time and the company's time with trivial matters?

A. No, sir.

Q. Didn't he also tell you that taking up matters was just to make an excuse to get out of your department to go down [266] there? A. No, sir.

Q. He never said that to you? A. No, sir.

Q. Never said that in substance or in that language? A. No, sir.

Q. You can't tell us any particular occasion when he characterized your visit as a trivial visit to waste your time? A. No, sir.

Q. Well, now, you are quite sure that all these men under whom you worked: Mr. Raymond, Mr. Liegal, Mr. Walter Borg, Mr. Waskey, Mr. Robert B. Mohr, Mr. William Larsen, and Mr. Mineah, none of them at any time remonstrated to you or reprimanded you for leaving your department without permission? A. Mr. Mineah did.

(Testimony of Arthur J. Fisher, Jr.)

Q. When did he do that?

A. One day when I was leaving Larimore's office.

Q. When was that?

A. Some time in November or December, 1941.

Q. Tell us about that. Did you have a Rover's badge at that time? A. Yes, sir.

Q. Where had you obtained it on that occasion?

[267]

A. From the clerk.

Q. What clerk? A. Mr. Larimore's clerk.

Q. Name?

A. Petit is the name; not Don Kimball.

Q. Pickett? A. Pickett, whatever it is.

Q. Tell me what happened when Mr. Mineah remonstrated with you on that occasion.

A. He told me I would have to stay on my job. In other words, if I didn't stay on my job, he would fire me.

Q. Was that in December of 1941??

A. Yes.

Q. Can you fix the date any better than that?

A. I can't recall exact dates.

Q. Was that any time between this December 13 occasion and the time you were fired on January 1, or was it before December 13?

A. I don't remember the exact date. I know when it happened, but I don't remember the date.

Q. It was some time in December?

A. It was in the month of December.

Q. Did you tell him you had a Rover's button, or did he see it?

(Testimony of Arthur J. Fisher, Jr.)

A. He seen it. You had to wear it out. [268]

Q. Did he ask you where you got it?

A. No, sir; he knew where I got it.

Q. He didn't ask you whom you had obtained it from?

A. No, sir, he didn't.

Q. Didn't he tell you nobody but him could give you permission to leave his department?

A. He told me from now on.

Q. He told you from now on nobody but him could give you permission?

A. From now on I could not leave my bench.

Q. Without his permission?

A. I could not leave my department, period; no more.

Q. But you did, didn't you? A. Yes, sir.

Q. And you left without his permission on the first of January?

A. No, I left with his permission before the first of January. He gave me permission before the first of January, after I had spoken to Mr. Powell at the meeting of December 6th and told him what had taken place, or in November; I don't know the exact meeting, and it was told to Mr. Powell and Mr. Newman that Mineah said I could not go to see Mr. Newman or Mr. Powell or Mr. Larimore. George Newman talked to Mineah and cooled him off, I guess; I don't know; but Mineah let me go through the same routine again. [269]

Q. Well, then, this must have been before December 16th.

A. Previous to that meeting.

(Testimony of Arthur J. Fisher, Jr.)

Q. You are sure of that now?

A. I told you it was before.

Q. A minute ago you told me you couldn't fix the date.

A. I said the month of December.

Q. Don't argue with me. I asked you whether it was between December 13 or January 1 or before that, and you told me you couldn't say. Now, your recollection is apparently refreshed that it was before December 13. Is that right?

A. It was in the month of December.

Q. I am trying to fix the date, Mr. Fisher, when this occasion took place.

A. Previous to December 16.

Q. Previous to that?

A. Yes, it must have been.

Mr. Riggs: Are we going to adjourn soon?

Trial Examiner Hektoen: Do you have much more of this witness?

Mr. Riggs: Yes, sir.

Trial Examiner Hektoen: About how much more?

Mr. Riggs: About half an hour.

Trial Examiner Hektoen: We will adjourn until 1:30, and inasmuch as you are on cross examination, Mr. Fisher, please do not talk to anybody about these matters, will you? [270]

The Witness: Yes, sir.

(Whereupon, at 12:30 o'clock, p.m., a recess was taken until 1:30 o'clock p.m. of the same day.) [271]

(Testimony of Arthur J. Fisher, Jr.)

After Recess

(The hearing was reconvened at 1:30 o'clock p.m.)

Trial Examiner Hektoen: The hearing will be in order.

Mr. Riggs: I have no more questions of Mr. Fisher.

Trial Examiner Hektoen: Mr. Harrington.

Redirect Examination

Q. (By Mr. Harrington) You testified, Mr. Fisher, I believe, that you had no union position when you were discharged in July of 1940—you held no position with the union?

A. No, sir, I did not.

Q. Had you engaged in any union activities prior to that time? A. In Consolidated?

Q. Yes. A. Yes.

Q. What was those activities?

A. I helped organize the union in the plant when we went to work there. There was only around fifty members in there at that time and I worked in my department and Mr. Felton, our business representative today, worked on the machine shop. In other words, there was one of us in each department who tried to take a little foothold and get the boys into the union in each department.

Q. Now, there was testimony on your cross examination that [272] Walter Borg was union shop committeeman and you stated at that time that you

(Testimony of Arthur J. Fisher, Jr.)

wanted to say something. What was it you wanted to say?

A. Well, Walter Borg was shop committeeman and if we gave Walter Borg a grievance and it didn't just strike him right, why, he used to tear it up and throw it away. In other words he didn't present them to the company. That is the kind of a committeeman he was.

Q. You were union committeeman all through 1941, were you? A. Yes, sir.

Q. That memo of July 23rd, 1941, Company's Exhibit No. 2, I believe, what did that memo refer to?

(Handing exhibit to the witness)

Mr. Riggs: I object to that. I think it speaks for itself.

Trial Examiner Hektoen: Well, what is the purpose of your question, Mr. Harrington?

Mr. Harrington: Well, I believe Mr. Riggs examined on it, on whether that memorandum affected him or whether it had any bearing on him.

Trial Examiner Hektoen: Well, I suppose to that extent Mr. Riggs' objection is well taken. What it refers to would seem to be self evident. If you want to ask some specific question about it you may.

Q. (By Mr. Harrington) Did that have any bearing on you? [273] A. No, sir, it did not.

Q. Why?

A. At that time we had no machinery. The only way I can explain this is to tell the story so you

(Testimony of Arthur J. Fisher, Jr.)

can get it, you know, so we will understand it. At that time we had no machinery in the parts plant and they had no way for the jig builders or tool-makers or anything like that to make parts up there. We just moved up there and there was certain individuals, such as toolmakers and jig builders that was making a habit of leaving the plant and going down to the Home plant and loitering around, so in order to stop that management had to do something, so they got at it and they said that any man that went from the parts plant to the Home plant or vice versa would have to have permission from his foreman to do so.

That is why that was put on the board. In fact the clock that we punched on didn't even have that on the clock. I seen that on the jig builders clock, that statement which was at the foot of the stairs on the first floor where I worked up on the second mezzanine above. That was where I seen it on the clock. It wasn't on our clock at all.

Q. Did Respondent's Exhibit 3, that is the memo of August 26, 1941, refer to union committeemen?

(Handing exhibit to the witness)

A. This memorandum when it was put on the clock——

Mr. Riggs: May I make an objection there that again [274] this exhibit speaks for itself.

Mr. Harrington: Well, you examined him on that point, I believe, Mr. Riggs.

Mr. Riggs: I think that I examined him by

(Testimony of Arthur J. Fisher, Jr.)

asking him if he had seen that exhibit at the time that it was posted and he said that he had. Then he went on to say that he didn't think it applied to him but I didn't ask him other than that about it.

Trial Examiner Hektoen: May I see the exhibit, please?

(Exhibit handed to the Trial Examiner.)

Trial Examiner Hektoen: Do you want to ask another question?

Q. (By Mr. Harrington) Do you know the circumstances of the posting of that memo?

A. Yes, sir. This was put on the clock for the simple reason that men were running from one building to the other visiting—

Mr. Riggs: May I object to this again, as to the circumstances of the memo.

Trial Examiner Hektoen: He may answer that if he knows.

The Witness: You see they were running from one building to another. We was in building 2 and building 3 and there was nothing but a fence on the outside and the men were visiting back and forth and in order to stop that and to find out who worked in building No. 2 and 3, and so the timekeeper could [275] check up where we were working, this bulletin was put on the board—it was mostly from the mechanical maintenance, electrical maintenance, stock and material chasers, receiving and shipping clerks and janitors—that is what it was put up for because I went in and asked Mr. Newman per-

(Testimony of Arthur J. Fisher, Jr.)

sonally myself if this—if we must abide by this bulletin.

In other words, we could not leave our building and he said to me:

“As long as you proceed to get your button and have permission to leave that is what you are supposed to do.”

And we continued to do it and they are still doing it.

Q. (By Mr. Harrington) You are referring to Respondent's Exhibit 3? A. Yes, sir.

Mr. Riggs: May I have that, please?

(Exhibit handed to Mr. Riggs.)

The Witness: That is on the one—on the Rover button.

Q. (By Mr. Harrington) Who spoke in support of Major Fleet's request to work more than eight hours a day at the union meetings?

A. Walter Borg.

Q. And what is he doing now?

A. I don't know. He is holding some kind of big job at Consolidated now. I don't know what he is. He has been boosted a way up continuously since the day that he proposed [276] that motion.

Q. Do you know how soon after that Borg was promoted?

A. Borg was made leadman the week that that happened.

Q. Before or after?

A. After, and he was made supervisor. I don't

(Testimony of Arthur J. Fisher, Jr.)

know if he is a foreman now or what he is, but he has been boosted up right along since that happened.

Q. Were you ever told that you could not do things, carry on your union activities on your own time?

A. No, sir. The only time I ever had anything said about that was whenever I first went back to work after being re-hired, that you wasn't supposed to do any union activities during working hours.

I read that in, I think it is in our agreement, Section 5—I forget the number.

Q. You testified that at this meeting on December 16th this matter of Mineah saying you could not leave your department was brought up. How was it brought up at that meeting and what happened?

A. December 16th? That was in November's meeting. That was in November's meeting when that happened. That was in November's meeting. December's meeting was where all the argument came up about the raincoats and boots, but November's meeting was where we talked about it.

I said December. I made a mistake there myself. It was [277] November we talked about the grievance that I wrote up on Mineah.

Q. That is the one you testified to?

A. That is right. That was in November's meet-

(Testimony of Arthur J. Fisher, Jr.)

ing because Mr. Newman was present at that meeting and in December's meeting Mr. Newman was in Texas at the Texas plant so he wasn't there, but I recall it distinctly now he was at the meeting where that was brought up.

Mr. Riggs: May I have that grievance, please?

(Paper handed to Mr. Riggs.)

Mr. Harrington: I have no further questions.

Recross Examination

Q. (By Mr. Riggs) You mean to say that this Board's Exhibit No. 16, a grievance without a date upon it, which I asked you on cross examination, was made out sometime in November?

A. Yes, sir.

Q. You want to correct December?

A. Yes, because I know Mr. Newman was the one that answered it.

Q. You say Mr. Newman was the one that answered it? A. Yes, sir, and Mr. Powell.

Q. How did they answer?

A. Mr. Newman and Mr. Powell both said that they would talk to Mr. Mineah and kind of put him in his place a little [278] bit.

Q. At your request?

A. No, not at my request.

Q. Well, I mean in response to this?

A. Yes, in response to the grievance.

Q. In response to the grievance?

A. Yes.

Q. That Mr. Newman and Mr. Powell said that

(Testimony of Arthur J. Fisher, Jr.)

although Mr. Mineah told you you couldn't get out of your department without his consent, that they were going to tell him that you could go whenever you wanted to. Was that the idea of it?

A. No, they were going to tell him in regards to the language he used and the way that he approached me and told it to me.

Q. But did they still say that you should get your foreman's consent when you left the department?

A. No, I had made that arrangement with Mr. Powell and I continued to do the same thing under the arrangement that I made.

Q. What you want us to understand is that you had a blanket authority, practically, from Mr. Powell that was given you in January 1941 to get out of your department any time that you wanted to?

A. That is right, by notifying he or his clerk if he wasn't there—to notify his clerk.

Q. And was that never rescinded or restricted by anybody? [279]

A. No, sir, couldn't do it—how could they unless they put it in writing.

Q. I am asking you was it ever restricted by anybody? A. No, sir.

Q. You were never prohibited from leaving your department without the foreman's permission?

A. I have always left my department by going to the clerk and getting a button or to the foreman if he was there.

(Testimony of Arthur J. Fisher, Jr.)

Q. Now, who got Rover buttons in the plant beside committeemen? A. Who?

Q. Yes.

A. Anybody that was sent from one building to another or from one plant to the other.

Q. But every committeeman that left his department had to get a Rover button, didn't he?

A. Yes, sir. All foremen have Rover buttons.

Q. So that this bulletin of August 26th with reference to the issuance of Rover buttons applied to committeemen as well as anyone else who wanted to leave their department?

A. Yes, sir, as far as the buttons were concerned, yes, sir.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington) What was Powell's position with the company? [280]

A. When I first went to work for him he was foreman. He is now assistant plant manager.

Q. And how long has he been assistant plant manager?

A. Since we moved to the parts plant he was made assistant plant manager in, I think, in July of last year, 1941. I am not positive of the exact date but I think it was in July or August.

Q. After he gave you that permission had anybody ever told you anything else since—any official of the company up to this time in December?

A. No, sir, only the time that Mineah and I had

(Testimony of Arthur J. Fisher, Jr.)

words about it and he told me that I couldn't leave my job. That was the only time.

Mr. Harrington: I have no further questions.

Recross Examination

Q. (By Mr. Riggs): What was his position at the time that you claimed he gave you this blanket authority in January 1941?

A. Mr. Powell was the foreman of the wing department of both plants.

Q. Do you remember where this conversation took place?

A. Yes, sir; in building No. 4, in the main aisle—in the main crosswalk running east and west, right in the center of the building. His desk was right at the end of the aisle in the main aisle running north and south. [281]

Q. Was there any other committeeman in that department at that time?

A. Yes, sir; Tommy Acock.

Q. Did he give Mr. Acock the same permission?

A. I don't know. I didn't make arrangements for him. I made my own arrangements with Mr. Powell.

Q. Do you know of any other committeemen that had the same authority?

A. Well, I could say all the committeemen had that authority; all of them.

Q. They could all leave their department at any time?

A. By notifying the foreman or the clerk.

(Testimony of Arthur J. Fisher, Jr.)

Q. By notifying and obtaining the permission of the foreman?

A. The foreman or clerk if the foreman wasn't present. You had to notify the clerk where you was going to and that is the way we done it all the time. They still continue to do the same.

Mr. Riggs: I object to that. You haven't been there since January 1st, 1942.

Trial Examiner Hektoen: Objection sustained.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything more?

Mr. Harrington: No.

Trial Examiner Hektoen: Mr. Fisher, you testified that Powell at one time told you that you would get ahead a lot [282] faster if you would quit this union stuff. When was that done?

The Witness: That was in January of 1941.

Trial Examiner Hektoen: But when did you become parts plant chairman?

The Witness: Parts plant chairman?

Trial Examiner Hektoen: Yes.

The Witness: We moved to the parts plant—I am not positive now whether it was July or the first week of August, but we moved up there, I will say, in July.

Trial Examiner Hektoen: 1941?

The Witness: 1941. And after we moved to the parts plant there was several committeemen up there and they would run in—I will have to tell you this story in order to tell this to you.

(Testimony of Arthur J. Fisher, Jr.)

They would run into Newman's office and to Larimore's office, each one of them, individually, with a grievance or with an argument about some little thing that had happened and they would get it written up in grievance form and take it in and Newman wanted to know who he would talk to, so at the time Brother Felton, our business representative today—who is business representative today, at that time he and Chudleigh and he designated me as chairman of the committee until one was elected and I held that job as chairman of the plant until I was discharged. [283]

Trial Examiner Hektoen: Now, at the same time then that Powell told you that you would get ahead faster if you would quit this union stuff, he also entered into this arrangement whereby you could go around with his permission, is that correct?

The Witness: Yes, sir.

Trial Examiner Hektoen: About the same time?

The Witness: Same time.

Trial Examiner Hektoen: Now, on the 13th of December when this McMahan incident took place, you ran down there and told McMahan that the whole thing should be taken up through the union rather than directly; is that right?

The Witness: Yes, sir.

Trial Examiner Hektoen: And then thereafter you called up Newman?

The Witness: Yes, sir; called Mr. Newman on the telephone.

(Testimony of Arthur J. Fisher, Jr.)

Trial Examiner Hektoen: Was he exercised about anything at that time?

The Witness: He told me when I called him on the phone—his exact words was that he didn't know anything about a petition being in that plant. He said he knew that one was circulated in the Home plant and that all the men had signed it. [284]

Q. He didn't know anything about it?

A. He says he didn't know anything about it.

Q. Did you make an appointment with him, or what?

A. I told him whenever I was talking to him on the phone, I would stop in to see him on my way home.

Q. That same evening?

A. Yes.

Q. Thereafter, when you saw Stark and Newman, you got rather mad? A. Yes, sir.

Trial Examiner Hektoen: Those are all the questions I have. Any more?

Mr. Riggs: No.

Mr. Harrington: No.

Trial Examiner Hektoen: That is all.

(Witness excused.)

Mr. Harrington: Mr. McMahan.

T. L. McMAHAN

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington): Give your name to the reporter.

A. T. L. McMahan.

Q. What is your address? [285]

A. 1852 Third Avenue.

Q. Are you an employee of the company?

A. I am.

Q. For how long have you been employed by the company? A. 14 months.

Q. Are you a member of the union?

A. I am.

Q. How long have you been a member of the union?

A. Approximately 14 months.

Q. What type of work do you do?

A. Sign writer.

Q. Were you working at the plant in December of 1941? A. Yes, sir.

Q. Do you know Arthur Fisher?

A. I do.

Q. Did you have a conversation with him on that date?

A. What was the date?

(Testimony of T. L. McMahan.)

Q. Did you have a conversation with him in December? A. Yes, sir.

Q. What date?

A. It was on Saturday afternoon, December 13.

Q. What was that conversation about?

Mr. Riggs: I object to that.

Trial Examiner Hektoen: Why?

Mr. Riggs: It is not binding or conclusive upon the [286] company in the absence of any company representative.

Trial Examiner Hektoen: I think it is close enough. The objection is overruled.

Q. (By Mr. Harrington): What was the conversation?

A. It was, really, you might call it a petition, a circular, or something, that was sent up on the roof to me where I was working, in regard to working on Sundays without pay.

Q. I show you Board's Exhibit 15. Have you ever seen that before?

A. No, sir, I did not see this before.

Q. Have you——

A. It was not the one that was handed to me.

Q. Is the material in there the same?

A. No, sir.

Q. What was the one that was handed to you?

A. The one that was handed to me stated that we would work and no compensation would be acceptable by us for our work on Sundays.

Q. You state this was not the one?

(Testimony of T. L. McMahan.)

A. No, sir, that is not the one, because it stated we would receive no compensation for our work on Sunday.

Q. Well, read this again.

A. No, we were not to ring up cards, or anything.

Q. Very well. You say this petition was sent to you on the roof of the building, this petition you refer to? [287]

A. Yes.

Q. Who brought it to you?

A. One of the painters working over the edge of the building on a ladder. It was sent up to him by the clerk of the wood mill, and he brought it over the top of the building to me.

Q. What was this painter's name?

A. I don't know what it was.

Q. When he brought it to you, did he say anything to you?

A. He told me it was a paper for me to sign to work Sundays. So I read it and gave it back to him, and told him I wouldn't sign it.

Q. Did you see the petition again that day?

A. I did.

Q. When?

A. Oh, approximately an hour or an hour and a quarter after that.

Q. Where did you see it at that time?

A. Back on the roof of No. 3 building it was handed to me again by one of the mechanics.

Q. Do you recall his name?

A. He was sent up, he said it had been given to

(Testimony of T. L. McMahan.)

the lead man, Johnny Young, by the clerk and Johnny Young sent it up. I don't know which one handed it to him.

Q. What happened at that time? [288]

A. On the second time I came down off the roof and came down on the second mezzanine, No. 3 building, to see Fisher in regard to it.

Q. Did you see him?

A. No, sir. When I went to his department they said he had gone to the toilet, so I went down the steps there and contacted Mr. Hardman at the foot of the steps.

Q. Did you contact Mr. Hardman, you say?

A. I did.

Q. Then what happened?

A. Mr. Pyatt came up at that time and they both advised me not to sign it.

Q. What did you do then?

A. Well, we were there talking by the steps, and Fisher came down the steps from his department, and I showed him the petition, and he advised me not to sign it.

Q. What did you do then?

A. I went on outside the north end of No. 3 building where the clerk was waiting for me, and he advised me to sign the petition, and I told him I would not.

Q. Who was the clerk?

A. Merle Pallenberger.

Q. When you say he was a clerk, what kind of a clerk was he?

(Testimony of T. L. McMahan.)

A. He was a foreman's clerk on the woodmen's department. [289]

Q. Who was foreman in that department?

A. Ted Stark.

Q. What time of day was that?

A. 3:15 or 3:30 in the afternoon.

Mr. Harrington: I have no further questions.

Cross Examination

Q. (By Mr. Riggs): When you talked with Mr. Harkins and Mr. Pyatt, did you have this petition with you? A. I did.

Q. Was it a petition or bulletin such as has been shown you, Exhibit 15?

A. No, it was no bulletin at all. It was type-written out and there was a place for signatures. There was only two painters that did not work on Sunday, and the rest of the painters worked on Sunday.

Q. What became of it after you talked to Harkins and Pyatt?

A. I went back and give it to Pallenberger.

Q. Are you sure it asked you to work without pay, or in accordance with this Bulletin 15 which said you could punch the time clock for time and a half?

A. I took an oath here to tell the truth.

Q. It asked you to work without pay.

A. It did.

Mr. Riggs: That is all. [290]

Trial Examiner Hektoen: No questions.

Mr. Harrington: No questions.
(Witness excused.)

Mr. Harrington: Mr. Harkins.

DENNIS B. HARKINS

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

- Q. (By Mr. Harrington): What is your name?
A. Dennis B. Harkins.
A. And your address?
A. 5059 Holly Boulevard.
Q. Are you employed by the company?
A. Yes, sir.
Q. Where do you work?
A. Department 65.
Q. And what department is that?
A. Tool room.
Q. Are you a member of the union?
A. Yes, sir.
Q. How long have you been a member?
A. Oh, I would say about 16 or 17 months.
Q. Have you held any position in the union?
A. Committeeman in Department 65. [291]
Q. And when was that?
A. Up until about a month ago for about, oh, a year or better.

(Testimony of Dennis B. Harkins.)

Q. Were you working in Department 65 in December, 1941?

A. Yes, sir.

Q. Do you know N. R. Pyeatt?

A. Yes, sir.

Q. Is he an employee of the company?

A. Yes, sir.

Q. Where does Pyeatt work?

A. Pyeatt works about 12 feet back of me, two benches, to be exact. We have benches there and he works the second bench in back of me, when he is there.

Q. Was a petition circulated in your department on December 13?

A. Yes, there was a petition circulated on December 13.

Q. What did that petition consist of?

A. That was in relation to working Sundays for time and a half, and that petition was first presented to Mr. Pyeatt.

Q. Can you give me more details of what that petition consisted of?

A. Well, the only thing I can recollect now; I didn't read the petition very carefully, was at that time our foreman was circulating the petition for men to work on Sundays for time and a half. [292]

Q. I show you Board's Exhibit 15. Have you seen that before?

A. Yes, sir. That is a copy that was on the clock.

Q. Is that the one——

(Testimony of Dennis B. Harkins.)

A. —and the petition that was circularized was in conjunction with this memorandum.

Q. But it wasn't this one?

A. It wasn't that, exactly, because there was—wait until I see if I can remember; our petition had nothing to do with this here fuselage paint shop; it was only the jigs and tools.

Q. Mr. Harkins, how was that petition circulated in your department?

A. Well, the petition was given to Mr. Pyeatt and after he refused to sign it, he told me what it was and my job as committeeman was: I went around and told the rest of the boys if they signed that petition, which was against our contract and against the Labor Relations Act, they would be liable to a fine from ten to twenty-five dollars, by the union.

Q. Who was your foreman?

A. Mr. Charles Taylor.

Q. Did you have any conversation with Mr. Fisher on that date? A. Yes, sir. [293]

Q. What was that?

A. Well, when I went over to see some of the boys about the petition, and I came back, Mr. McMahan come down; Mr. Pyeatt and I were talking to him when Fisher come along and started to get quite a crowd around the foot of the steps, so I went back to my bench. Mr. Fisher come over and told me exactly what the petition was about and I also told McMahan not to sign the petition to work without pay or with time and a half.

(Testimony of Dennis B. Harkins.)

Q. What happened then?

A. Well, then McMahan left, and I returned to my bench.

Q. In your position as committeeman of the union, what were your duties?

A. My position as committeeman of the union was to take care of grievances and all kicks of any kind the men thought they had coming, or did have coming.

Q. What men would that be?

A. That would be the men in Department 65, the tool room.

Q. What complaints and grievances did you take up in December of 1941?

A. For instance, we had the doors to the building open; there were big doors being kept open and it was quite drafty, and we had to put the heat on everybody to get them closed; and the parking situation, we had that.

Q. What was the parking situation? [294]

A. That was the latter part of December, I would say about the 29th of December, several of the men came to me that morning and complained they had been late. They had to climb over cars that were parked, in the street they were parked in the lanes, and they came and made a complaint to me about it.

Q. Who were those employees?

A. I couldn't recall their names now. We have a couple of hundred there.

(Testimony of Dennis B. Harkins.)

Q. What did you do with respect to that complaint?

A. That complaint, I took, as we always did, I went and got a Rover's button,—

Q. Who did you get the button from?

A. From our clerk.

Q. What is his name?

A. Pat Paxton.

Q. Who was foreman at that time?

A. Charlie Taylor.

Q. Did you see Taylor before leaving your department?

A. No, because I had permission from Taylor to get a button from Paxton when I needed it, because Taylor told me prior to that there was no use of my hunting him all the time; I could be trusted and I never abused any privilege he had given me.

Q. When did he give you that permission?

A. About October.

Q. Did you leave the department without seeing him after you [295] got that permission?

A. Yes, I left the department dozens of times.

Q. What did you do on this occasion after you got the Rover's button?

A. Well, I went to get Mr. Fisher to go out and get permission from the captain of the police, Joe Shadduck, to go up on the overpass on our way out to—Fisher was—I got Fisher, and we went to his office, and he got a Rover's button. On our way

(Testimony of Dennis B. Harkins.)

there we ran into Jim Powell, and the three of us proceeded and got permission from Shadduck to go up on the overpass and look the car situation over.

Q. Who is Powell?

A. Powell was committeeman I think in Department 9.

Q. Who was Shadduck?

A. Shadduck was captain of the police of the parts plant, at that time.

Q. After receiving permission, what did you do then?

A. We went up and looked the car situation over and came back to the personnel office to make a request for Mr. Larimore.

Q. You say in the personnel office? Who did you see?

A. Bill Larimore, and we made our wishes known, and Mr. Larimore said he would see what he could do about it.

Q. Then what did you do?

A. Powell had something to take up with Larimore, which I [296] stepped outside of the office while he conducted the business, and when we were through, we went back to our departments.

Q. Did you turn your Rover's button in?

A. Yes, I turned my Rover's button in.

Q. Who did you turn in to?

A. Back to the clerk.

Mr. Harrington: I have no further questions.

(Testimony of Dennis B. Harkins.)

Cross Examination

Q. (By Mr. Riggs): Did anyone sign the petition about working on Sundays at all?

A. Yes, sir; there was one man that I know of, and he signed that on my instructions.

Q. This was circulated on December 13; that was a Saturday?

A. That was a Saturday.

Q. That applied to the Sunday after the attack on Pearl Harbor, the 14th?

A. It was on the 14th; it was the Sunday after.

Q. When was that discussion that you had about the parking situation?

A. Well, that was in the latter part of December. I would say that was about the 29th or it may have been the 30th, but I think it was the 29th.

Q. The parking situation has been pretty acute in this plant at all times, hasn't it?

A. Yes. Do you want me to explain that? [297]

Q. I just want you to answer the question.

A. It has been acute until a few months ago.

Q. Has the management now corrected the situation?

A. The management made the contractor come back and tear it up and do a good job of it.

Q. You say Mr. Taylor said you could have a Rover's button at any time by applying to the clerk, that you had never abused it, that you knew of?

A. Yes, sir.

(Testimony of Dennis B. Harkins.)

Q. Is that the fact?

A. It is the fact.

Mr. Riggs: I have nothing further.

Redirect Examination

Q. (By Mr. Harrington): How often did you leave your department on union business without asking the foreman, after he gave you that permission?

A. Oh, hell. I couldn't even estimate that. It would be sometimes twice a day, and then other times, well, in fact, when we were having some trouble with Mr. Fisher and myself, we were out of the department a good bit of time. I wouldn't even try to estimate it.

Q. Were you generally out with Fisher?

A. When the case related to my department.

Trial Examiner Hektoen: Thank you.

Mr. Harrington: I have no further questions.

(Witness excused.) [298]

Trial Examiner Hektoen: We had something about him yesterday. On what basis was that?

Mr. Harrington: On the basis—we are not alleging discharge as an unfair labor practice, but we are alleging that the company refused to meet with the union afterwards and discuss his case.

Trial Examiner Hektoen: Refused to meet with them?

Mr. Harrington: Yes, sir; refused to discuss his case with the union afterwards.

Trial Examiner Hektoen: And is that a part of your allegations?

Mr. Harrington: 8(5). [310]

Trial Examiner Hektoen: We will be in order, please.

Mr. Harrington: Will you mark this for identification, please?

(The document referred to was marked as Board's Exhibit No. 17 for identification.)

Mr. Harrington: May we stipulate, Mr. Riggs, on the record that this exhibit which I have had marked Board's Exhibit No. 17 for identification is the contract which was entered into preceding Board's Exhibit 3, which is the present contract?

Mr. Riggs: I so stipulate.

Mr. Harrington: Thank you.

Trial Examiner Hektoen: It is admitted as Board's Exhibit 17.

(The document heretofore marked for identification as Board's Exhibit No. 17 was received in evidence.)

BOARD'S EXHIBIT No. 17

AGREEMENT

Between
Consolidated Aircraft Corporation
and the
International Association of Machinists,
Aircraft Lodge No. 1125

American Federation of Labor
San Diego, California

Covering all hourly-paid employees of Consolidated Aircraft Corporation with respect to rates of pay, wages, hours, and other conditions of employment.

12 June 1941

Foreword

This agreement has been negotiated in accordance with law and in compliance with two certifications of the National Labor Relations Board following elections at which the hourly-paid employees of Consolidated Aircraft Corporation selected the International Association of Machinists, Aircraft Lodge No. 1125, which may, for the convenience of the Lodge and by mutual consent of the parties hereto, be divided into sub-lodges thereof, to represent them as the collective bargaining agency with the company. (3)

Union Agreement

Agreement made this 12th day of June, 1941, between Consolidated Aircraft Corporation, herein called the "Company" and International Associa-

Board's Exhibit No. 17—(Continued)
tion of Machinists, Aircraft Lodge No. 1125, herein
called the "Union";

Witnesseth:

Whereas, there have been held at the company's plant at the direction and under the supervision of the National Labor Relations Board two separate and successive elections for the unit defined by said Board as comprising the then hourly-paid employees of the Company to determine representation for the purpose of collective bargaining with their employer, and

Whereas, in such elections the Union received a majority not only of the ballots cast but also of all employees qualified to vote and embraced within such unit, and

Whereas, the Union desires to enter into agreement with the Company with respect to rates of pay, wages, hours, and other conditions of employment, and

Whereas, it is the purpose of this agreement to promote continuity of work by friendly relations between the Company and the Union:

Now, Therefore, in consideration of the premises, the parties hereto agree as follows:

1. Recognition: The Company recognizes the Union as the exclusive collective bargaining representative of all employees in the (4) unit defined by the National Labor Relations Board, namely, all hourly-paid employees and salaried inspectors (except supervisory inspectors and confidential clerks). During the term of this Agreement, in lieu of the Union's request for a closed

Board's Exhibit No. 17—(Continued)

or Union shop or preferential hiring, all persons who are hereafter employed by the Company and who are eligible for membership in the Union shall be given by a Company representative before beginning work a copy of this Agreement, a Company Rule Book, and a Union membership application to which is attached a dues deduction order, to run for the term of this agreement, which membership and order the Company hereby recommends providing the total initial cost of such membership is not greater than \$5.00 and the dues are not greater than as set forth in Section 3 hereof. The Union agrees that there shall be no solicitation of employees for Union membership or for dues, fines, or assessments, on Company time, and that it will accept for Union membership for the term of this contract any present or future hourly-paid employee of the Company, and that the Union will not discriminate in any way against any employee because, before joining the Union, he may have opposed it or its acts in any manner. The Company agrees to distribute the above stated literature to all its present employees who are eligible for membership in the Union, and to recommend their joining.

2. Rates of Pay: Effective 9 August 1941, the minimum rate of pay of all present and future employees of the Company (unless an apprentice or training system is adopted) shall be 60 cents an hour for the first four weeks of continuous employment; 65 cents an (5) hour for the second four weeks of such continuous employment; 70

Board's Exhibit No. 17—(Continued)

cents an hour for the third four weeks of such continuous employment; and 75 cents an hour after the twelfth week of such continuous employment.

An eight cent an hour bonus shall be paid all hourly-paid employees on night shifts, ~~and on regular day shifts which include both Saturdays and Sundays.~~

Leadmen shall be paid at least eight cents per hour more than the highest rate paid to employees regularly assigned to work under their supervision, and supervisors shall be paid ten cents an hour more than the highest rate paid to leadmen regularly assigned to work under their supervision.

3. Wage Rates: The Company and the Union will establish a joint committee to review hourly wage rates by mutual agreement in each department every six months, to meet during the months of April and October. This committee shall consist of six members, three from the Company and three from the Union who are Company employees. One of the Union members shall be rotated so that the Union committeeman of each department will serve as a member of the committee during the time the rates of his department are reviewed. In the event the joint committee is unable to reach agreement as to wages to be paid in any department, the matter will be submitted to the next general committee meeting with the management. In accordance with past practice, the Company will approve interim individual increases when justified, after consulting the foreman and

Board's Exhibit No. 17—(Continued)

the Union committeeman of the department concerned. (6)

Effective 3 May 1941, the Company granted five cents an hour increase to every employee covered by this 12 June 1941 Agreement in lieu of all privileges under the 15 April 1940 Agreement.

Retroactive to 9 August 1941, in lieu of all privileges under the second and third paragraphs of Section 3 of this 12 June 1941 Agreement (which paragraphs are hereby cancelled), the Company grants thirteen cents an hour increase to every employee who was on 11 October 1941 receiving more than 65 cents an hour.

When ordered by an employee, the Company will deduct, either weekly or monthly at its election, the dues prescribed by the Union, the maximums of which are designated hereinbelow from the employee's pay and remit this amount to the Union. These deductions for dues will start within 10 days after the receipt by the Company of the employee's order and will stop with the termination of this Agreement, or within the week prior to the week in which the employee is terminated.

In no event shall the dues exceed 50 cents a week for journeymen mechanics and specialists (employees receiving a base pay of 80 cents an hour and over) and 35 cents a week for production workers and helpers (employees receiving a base pay of 79 cents an hour and less). No deduction shall be made in any week for dues if the employee's earnings, after deducting social security taxes, group insurance premiums, and

Board's Exhibit No. 17—(Continued)
amounts due to the Company for tool sales, advances, etc., is insufficient to cover the full weekly deduction for such dues. (7)

4. Hours: The work week shall consist of forty hours of five consecutive days, from Monday through Friday, except for custodial employees such as maintenance men, guards, and janitors, and accounting and confidential clerks, when shifts are being rotated. With the exception of such employees, eight hours shall be worked within nine consecutive hours.

5. Overtime Pay: Work after eight hours on any shift shall be considered overtime, payable at time and one-half* After three hours overtime on any one day and eight hours 11* overtime on Saturday the sixth day* (payable at time and one-half), double time shall be paid. With the exception of custodial employees, work on the seventh consecutive day shall be paid for at double time.

*[Printer's Note: Under scoring appears in pencil. The word "Saturday" is circled in pencil and "the sixth day" is written in the margin in pencil. The words "eight-hours" are circled and figure "11" written in margin in pencil.]

6. Shift Rotations: Custodial employees who may be involved in both Saturday and Sunday work, may be rotated every fifth week after they have completed five consecutive days and have one day's rest thereafter without overtime penalty for the seventh day.

7. Recognized Holidays: The following shall be considered double time holidays: New Year's

Board's Exhibit No. 17—(Continued)

Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

8. Representation: For each 500 employees, the Union may appoint one member to its shop committee, and a committee chairman for each shift. With the approval of the Union, each committeeman may select one steward for each 175 employees or major fraction thereof. The Union shall furnish the company an accurate list of all committeemen and stewards and keep the Company informed as to all changes therein. (8)

Marginal Notation—Section 9 amended Mar 5-1942.

9. Complaints and Grievances: The Company desires that unfairness to its employees shall not exist, and that complaints shall be settled with its foremen. No complaint shall be considered by the committee until taken up by the employee with the foreman concerned. In the event satisfaction is not obtained, the employee may present his complaint directly to the personnel director, or to the shop committeeman in his department, who may take up the same with the departmental foreman and if satisfaction is not obtained in this manner, the shop committeeman with the committee chairman may then take up the complaint with the company personnel director, who shall jointly take it up with the Factory Manager, and if not settled satisfactorily in this manner, it shall be submitted to the full committee. The Company agrees to meet with the committee the third Thursday of

Board's Exhibit No. 17—(Continued)

each month to discuss the welfare of employees and to hear and settle any complaints. All grievances made to the full committee shall be submitted in writing, and signed by the complainant and by the department representative.

10. Discharge: When requested in writing by a discharged employee, the Company, following present practice, will furnish either the employee or the Union with the reason why such employee was discharged.

11. Regulations: The Union and the Company agree that the regulations set forth in the Company's Rule Book, attached to and made a part of this agreement, are necessary for the efficient operation of the Company's plant, and that infraction of any rule constitutes cause for discharge or disciplinary action. (9)

12. Intimidation and Discrimination: The Company agrees not to intimidate nor in any way discriminate against any employee because of Union activities; the Union agrees not to intimidate nor in any way discriminate against any employee not belonging to the Union.

13. Calls and Reporting: If a man is called other than for his regular shift or continuous extension thereof, he shall receive two hours' minimum pay.

14. Bulletin Boards: The Company will locate and supply on its premises sufficient bulletin boards for the use of the Union. The Union agrees to sign all its notices (which notices shall not malign the Company or employees), and to submit all no-

Board's Exhibit No. 17—(Continued)

tices to the management for approval. The company agrees to post promptly each approved notice on all bulletin boards.

15. Union Activities on Company Property: The Union agrees not to distribute literature, handbills, or printed matter on company property.

16. Seniority: The Company, in accordance with past practice, will continue in lay-offs to recognize seniority where ability, production, and conduct have been equal.

17. Leaves of Absence With Pay: Each hourly-paid employee who has completed one year of continuous service with the company shall be granted annually a leave of absence with pay of 12 eight-hour work days (96 hours) which may be used by the employee as vacation, sick leave, or time-off with pay on recognized holidays that fall on regular (10) working days. An employee forfeits his time-off with pay if absent ten regular working days during the twelve-month period unless such absence is due to an authorized leave, physical disability, serious illness or death in the employee's immediate family, or compulsory jury, military, or naval duty, all subject to verification by the Company. Leaves with pay shall not be cumulative and must be extinguished within twelve months after the period of eligibility begins. The Company may grant an employee pay in lieu of time-off with pay. This pay shall be computed at the employee's regular hourly rate. The management will attempt to grant vacations at times

Board's Exhibit No. 17—(Continued)
requested. However, the company may allocate certain times at which paid vacations must be taken. The employee must indicate in writing before the expiration of the pay week whether he desires to receive pay for the time lost during that week. Employees shall not be paid for fractional parts of a day. Termination of employment will automatically cancel the right of an employee to receive time-off with pay or to be recompensed therefor.

18. Leaves of absence Without Pay: In pursuance of the company's regularly established practice, leaves of absence without pay and without loss of seniority will be granted to employees for a length of time commensurate with the reason for such absence. The granting or disallowance of requests for leaves of absence shall be left entirely to the management of the Company.

Not more than six employees of the Company selected by the Union to do work for the Union which takes them away from their (11) regular employment shall be granted leaves of absence without pay of not more than 30 working days in each calendar year.

Leave of absence with seniority rights unimpaired shall be granted to full-time officers of the Union, provided such officers have had 12 months of prior continuous employment with the Company.

19. Transfers: Where an employee is transferred from one department to another and the

Board's Exhibit No. 17—(Continued)

work performed is similar and the skill required the same, his rate will not be changed.

20. Efficiency and Production: The Union agrees to submit in writing from time to time recommendations for improving the efficiency and increasing the production of the plant.

21. Training Plan: The Company will immediately inaugurate a study of the feasibility of establishing a training or apprentice plan either as a company function or in collaboration with Federal and State educational authorities which will enable its employees to increase their skill.

22. Military Service: If any employee subject to this agreement shall enter military service by conscription under the Selective Service Training Act of 1940, and the Active Service Act, such employee shall be granted a leave of absence for the duration of service without loss of seniority rights. If the United States becomes actively engaged in war, any employee covered by this agreement who enters the military service either by conscription or voluntarily, shall be granted a leave (12) of absence without loss of seniority for the duration of his military service during the war. Upon termination of such military service, if such employees shall request re-employment and if production warrants such re-employment and if the employees are physically able to do the work available, the Company will re-employ such persons in preference to all other persons in their occupations with less seniority.

Board's Exhibit No. 17—(Continued)

23. Arbitration: In order to protect the National Defense Program and the continuity of work for the United States Government, it is agreed that if any of the terms, provisions, or rates covered by this agreement are not settled satisfactorily by the parties hereto, the matter in dispute shall be referred to arbitration as follows:

The Company shall designate 2 representatives, and in like manner the Union shall designate 2 representatives. Said 4 representatives shall meet within 3 days after notification, and in the event that satisfactory settlement is not reached within 5 days after such notification, the United States National Defense Mediation Board shall be requested to designate a fifth member to the arbitration board. The decision of the majority of this arbitration board of 5 members shall be final and binding upon the parties hereto.

The Union agrees that there shall be no strike or slow-down, and the Company agrees that there shall be no shut-down or lock-out, while matters are being considered under this section. (13)

24. Boycott: The Union agrees that it will not permit its members to refuse to perform any work or handle materials or machinery or equipment because of the sources of supply or the Union affiliation or non-affiliation of the labor engaged in such supply or at such work.

25. Term: This agreement shall run two years from its date or for the period of the Unlimited National Emergency proclaimed by the President

Board's Exhibit No. 17—(Continued)
of the United States on 27 May 1941, whichever
is the longer, or until amended by agreement after
15-day notice by either party. This agreement su-
persedes the agreement of 15 April 1940, and all
previous agreements, whether written or oral, be-
tween the parties hereto.

CONSOLIDATED AIRCRAFT
CORPORATION,

R. H. FLEET,
President.

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS:

C. L. BENTLEY,
Grand Lodge Representative.

INTERNATIONAL ASSOCIA-
TION OF MACHINISTS,
AIRCRAFT LODGE, No.
1125:

WALTER J. CHUDLEIGH,
Pres.

R. J. BRAGG
DON WILKERSON
JOSEPH J. BLAKE
N. R. PYEATT (14)

before*

Sections 2 and 3 hereinabove show the higher
pay-rates negotiated under the National Defense
Mediation Board and agreed to 18 October 1941.

*Written in pencil.

Board's Exhibit No. 17—(Continued)

CONSOLIDATED AIRCRAFT
CORPORATION,

R. H. FLEET,

President.

W. J. CHUDLEIGH,

President I.A.M. Lodge 1125.

R. B. FELTON,

Business Representative,
District 22.

GEO. CASTLEMAN,

Vice-President International
Assoc. of Machinists. (15)

Aeronautical Mechanics Lodge No. 1125

Business Offices and

Meeting Hall

1054 Third Avenue

San Diego, California

Meetings

Night Shift—

Mondays at 10:00 a. m.

Day Shift—

Tuesdays at 7:30 p. m.

Meetings Are Subject to Change
(Union Label)

Mr. Harrington: Mr. Pyeatt.

N. R. PYEATT,

a witness called by and on behalf of the National
Labor Relations Board, being first duly sworn, was
examined and testified as follows:

(Testimony of N. R. Pyeatt.)

Direct Examination

Q. (By Mr. Harrington) Will you give your full name to the reporter?

A. N. R. Pyeatt. [327]

Q. And your address?

A. 1133 Fourth Avenue.

Q. Are you an employee of the company?

A. Yes.

Q. How long have you been an employee?

A. 27 months.

Q. Where did you work?

A. In the tool room.

Q. Are you a member of the union?

A. Yes.

Q. Do you hold any position in the union?

A. Yes.

Q. What is that position? A. President.

Q. When did you become president?

A. The first week of January, 1942.

Q. Were you working in the plant in January, 1941? A. Yes.

Q. And were you working in the tool room department at that time? A. Yes.

Q. Who was your foreman at that time?

A. Mr. C. Taylor, Charles Taylor.

Q. Did you have any conversation with foreman Taylor during that month in respect to working on Sundays? [328] A. Yes, I did.

Q. When did you have that conversation?

A. It was the Saturday following the bombing of Pearl Harbor, which would be December 13, I believe.

(Testimony of N. R. Pyeatt.)

Q. When did you have that conversation?

A. About 2:00 o'clock in the afternoon.

Q. And where was it?

A. At my work bench.

Q. Who was present there?

A. None but just Mr. Taylor and myself.

Q. What was said in that conversation?

A. Well, Mr. Taylor said in view of the fact that I had one of the hottest jobs it may be necessary for me to work the following Sunday, and would I consent to do so, at which time I told him I would.

Q. What do you mean by "one of the hottest jobs"?

A. Well, the job was very necessary; it was a vital job; in other words, we generally term a "hot job" as a job that is needed badly; that is behind schedule.

Q. Did you have any other conversation about working on Sunday?

A. Yes, later in the day I did.

Q. Who with? A. Mr. Taylor.

Q. What happened at that time?

A. And at that time Mr. Taylor came over and told me if I [329] would work the following Sunday that I would either have to work without pay or have time and a half pay, and he had a petition for me to sign, and he said in view of the fact that he had to work also, he would sign it first.

So, he laid it on the bench and leaned over and signed it and I leaned over and read a few words at the top and I told him in view of my position in the union, being a good union man, and it not being in

(Testimony of N. R. Pyeatt.)

the throes of our agreement, and wishing to abide by the agreement, which we had at that time, I would not sign the petition.

Q. What did the agreement have relative to Sunday work?

A. Our agreement stipulation was double time for Sundays and holiday work.

Q. Could you describe the petition?

A. There were a very few words at the top of it and about all that was said on the petition was that: "We, the undersigned employees volunteer to work Sunday, December 14, without pay."

Q. Were there signatures on that petition?

A. Just Mr. Taylor's was all at that time. In fact, he placed his signature on the petition in my presence at that time.

Q. After foreman Taylor signed that petition, then what happened?

A. Well, Mr. Taylor said that in view of the fact that I [330] wouldn't sign the petition I couldn't work, and I told him that satisfied me. So he took the petition and went on back to his desk.

Trial Examiner Hektoen: Just a minute; couldn't work when?

The Witness: On the following Sunday, that is, the following Sunday, if I wouldn't sign the petition I wouldn't be permitted to work the coming Sunday.

Trial Examiner Hektoen: I see.

Q. (By Mr. Harrington) You say you have been president since the first of the year?

A. Yes.

(Testimony of N. R. Pyeatt.)

Q. In your capacity as an officer of the union, have you taken up the discharges of employees in the company? A Yes, I have.

Q. What discharges did you take up?

A. Well, several discharges: namely, those of Brother Fisher and Brother Mergen.

Q. When did you take up Fisher's discharge?

Mr. Riggs: I will object to this again as being immaterial and cumulative.

Trial Examiner Hektoen: Is there a new matter to be brought out?

Mr. Harrington: No.

Trial Examiner Hektoen: Is there a danger of its being [331] cumulative?

Mr. Harrington: It is along the same lines of the testimony that has been given by Mr. Phillips, I believe.

Trial Examiner Hektoen: It's a matter for your judgment. If you want it you may have it. If you don't, we ought to consider whether it is cumulative or not.

Q. (By Mr. Harrington) Have you heard Phillips' testimony here?

A. No, I haven't.

Mr. Harrington: I will not pursue the subject. I have no further questions.

Mr. Riggs: Nothing.

Trial Examiner Hektoen: Thank you, Mr. Pyeatt.

(Witness excused.)

Mr. Harrington: Mr. Perry.

L. A. PERRY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) Will you give your name and address to the reporter?

A. L. A. Perry, and the address is 1460 Thomas Avenue.

Q. Are you a member of the union?

A. Yes. [332]

Q. How long have you been a member?

A. I have been a member for nearly five years.

Q. Do you hold any official position in the union?

A. Yes, I do. I am business representative.

Q. How long have you been business representative?
A. Since January 1st.

Q. Do you know Arthur J. Fisher?

A. Yes.

Q. How long have you known him?

A. Since April of 1940.

Q. Were you an employee of the company?

A. Yes.

Q. And where were you employed?

A. I was employed in the wing department.

Q. How long and when were you employed there?

A. In the company? I was employed in two periods: One started in November 30, 1936 until January 20 of 1939. And then I was reemployed on the

(Testimony of L. A. Perry.)

20th day of November, 1939 and I worked there until the 13th of January, 1941.

Q. In your work, were you in a position to observe Fisher's work? A. Not at first.

Q. Were you at any time?

A. I was the last three months I was in the employ of the company. He worked in the same area as I did. [333]

Q. What was your observation?

A. That he was a competent workman and created no disturbance and, further, conducted himself as any normal employee would that was interested in the work he produced.

Q. Did you hold any official position in the union at that time?

A. Yes, I did. I was recording secretary.

Q. As such, were you in a position to observe Fisher's conduct with respect to union matters?

A. Yes, if you refer to meetings, I was.

Q. What was his conduct?

A. His conduct was that of a union member that is much interested in the workings and the operation of the union.

Q. Is he an active member?

A. He was an active member and participated in practically every meeting.

Q. What sort of activities did he engage in?

A. The activities probably could be listed—

Mr. Riggs: I will object to this as immaterial.

Trial Examiner Hektoen: I think you may answer. What sort of activities did he engage in?

The Witness: In the union you have several dif-

(Testimony of L. A. Perry.)

ferent kinds of members. There are those that take a rather passive part, and do not attend meetings——

Trial Examiner Hektoen: What you are going to say is [334] that Fisher was very active?

The Witness: Fisher was very active, attended practically every meeting and took an active interest, frequently in a debate, and other items of similar importance.

Q. (By Mr. Harrington) And did you have anything to do with taking up Fisher's discharge with the company?

A. Yes. I finally entered into the picture shortly after becoming business representative, about the latter part of January.

Q. Did you engage in any correspondence with respect to Fisher's case?

A. In respect to his case the only correspondence that I had with the company was some time later, on the 19th of March I believe it was, if my memory serves me well.

Q. What was that correspondence?

A. That had to do with clarifying our understanding of the meeting that we had there with the labor relations manager, Mr. Wiseman.

Mr. Harrington: Will you mark this as Board's next exhibit for identification?

(The document referred to was marked as Board's Exhibit No. 18 for identification.)

Q. (By Mr. Harrington) I show you Board's Exhibit 18 for identification and ask you what that paper is.

(Testimony of L. A. Perry.)

A. That is the letter I wrote to Mr. Wiseman relative to [335] the case of Mr. A. J. Fisher, and that is my signature on that.

Q. How was that delivered to Mr. Wiseman?

A. Delivered in person.

Mr. Riggs: The date?

The Witness: The date it was delivered?

Mr. Riggs: No, the letter.

The Witness: The 19th of March.

Q. (By Mr. Harrington) And did Mr. Wiseman accept delivery of this?

A. Yes. I gave it to him and then he read it and returned it to me.

Mr. Harrington: I offer Board's Exhibit 18 for identification as Board's Exhibit 18 in evidence.

Trial Examiner Hektoen: Do you have any objection?

Mr. Riggs: No, sir.

Trial Examiner Hektoen: It will be received without objection.

(The document heretofore marked for identification as Board's Exhibit No. 18 was received in evidence.)

BOARD'S EXHIBIT No. 18

P. O. Box 631

Aeronautical Mechanics Lodge 1125

I. A. of M. District No. 22

A. F. of L.

Phone M 0979

1054 - 3rd

San Diego, California

(Testimony of L. A. Perry.)

RE. The case of A. J. Fisher against Consolidated Aircraft Corporation

March 19, 1942.

Mr. H. R. Wiseman,
Labor Relations Director,
Consolidated Aircraft Corporation,
San Diego, California.

Dear Sir:

To confirm a portion of our discussions of the above case, I refer to a meeting between you and I accompanied by Mr. R. B. Felton, Representative of District Lodge 22, I.A. of M. We understood you to make a statement, "that under no circumstances would Mr. Fisher be reinstated by the Company nor would the Company discuss the case further under any provision of our Agreement."

If no written answer to the above is received on or before March 24, 1942, I shall consider the above understanding I have of the case to be correct.

Very truly yours,

AERONAUTICAL MECHANICS
LODGE 1125

L. A. PERRY

Business Representative

LAP:ap

Collective Bargaining Agent for the Employees of
Consolidated Aircraft Corporation
(Union Label)

(Testimony of L. A. Perry.)

Q. (By Mr. Harrington) You say you presented it to Mr. Wiseman? A. Yes.

Q. Then what happened?

A. He read it and handed it back to me. He said he did not [336] intend to accept it nor did he intend to answer it, as he considered it a legal trick.

Q. Have you ever received an answer to that letter? A. No, sir; I never did.

Q. Do you know if Wiseman had authority to make a decision with respect to the Fisher case?

A. It is my understanding——

Mr. Riggs: I object to that.

Trial Examiner Hektoen: He may answer if he knows. Do you know?

The Witness: Yes, I do.

Trial Examiner Hektoen: What is your answer?

The Witness: The answer was: He did.

Q. (By Mr. Harrington) How do you know he did?

A. By participating in a meeting early in January relative to clarification of the company's policies regarding items of that and similar nature.

Q. Who was present at that conference?

A. At the conference, for the union, they consisted of myself, and Mr. Bruce and Mr. Phillips and Mr. Wilkerson and Mr. Pyeatt and Roy Brown for the International Association of Machinists.

Q. What occurred at that meeting?

A. At that meeting, it was held primarily so that we might have an understanding as to the company's policy and the [337] company informed us that Mr. Glenn Bowers and Mr. D. J. Fleet and Mr. Wiseman

(Testimony of L. A. Perry.)

were to have the power to say "Yes" or "No" to the normal labor relations problems, providing they didn't involve the changing of the agreement, which would be granting concessions, as the company stated it. There was to be no concessions under the agreement granted without the authority of Mr. Laddon.

Q. Do you know A. L. Hogan? A. Yes.

Q. Is he an employee of the company?

Mr. Riggs: What was that name?

Mr. Harrington: Hogan, A. L.

The Witness: Mr. Hogan was an employee of the company, yes.

Q. (By Mr. Harrington) Did you have any contact with him in respect to working hours at the Consolidated plant? A. I did.

Q. When was that?

A. That was, to the best of my recollection, on Saturday, December 13, 1941.

Q. What happened at that time?

A. At that time we received a phone call. I say "we", Mr. H. C. Brown and myself received a phone call from Mr. Hogan at the plant.

Q. Who is H. C. Brown? [338]

A. H. C. Brown was our publicity director, so-called, at that time; and he and I happened to be the only official members present in the hall.

Q. In the union hall?

A. In the union hall, yes.

Q. What was that telephone conversation?

A. It was relative to the circulating of petitions which were to be used as evidence that the employees desired to work on the following Sunday, which was

(Testimony of L. A. Perry.)

the 14th, at time and one-half, due to the national emergency that had then been created by the declaration of war.

Q. What did you do as a result of this telephone call?

A. As a result of the telephone call we immediately called M. J. Torreys, who was the shop chairman for the Home plant and inquired of him as to the authenticity of the conversation we had with Mr. Hogan, not wishing to go on one man's statements. We would rather have additional evidence. [339]

Q. What did you learn as a result of that?

A. From Mr. Torreys we learned that petitions were being circulated and from him also, we learned that there had been statements made by some of the employees that they would work for nothing on Sunday if needed, but for the purpose of getting out these ships in question which were badly needed then by the Government.

Q. Did you take any further steps?

A. At that time we immediately contacted Mr. M. J. Cassell and told him the seriousness of the situation, and together we advised that we have an emergency meeting of the executive board.

Q. Who is Cassell?

A. Cassell is vice president of the Lodge, was at that time.

Q. Did you hold this meeting of the executive board? A. Yes, we did.

Q. What occurred at that meeting?

Mr. Riggs: I object to all this as being immaterial and cumulative.

(Testimony of L. A. Perry.)

Mr. Harrington: I don't believe this matter has been gone into before.

Trial Examiner Hektoen: I think we might be interested in what occurred at the meeting. The objection is overruled. Or, at least, we will be interested in what action was taken [340] at the meeting.

Q. (By Mr. Harrington) What action was taken at that meeting?

A. The action taken at that meeting was to clarify our position as to whether or not we were to agree to allow our membership to work on Sunday. And, we agreed to allow the membership to work on Sunday, and we would take the matter up as to what action would be taken from the side of the company, on Sunday afternoon at the executive board meeting. We adjourned then——

Q Did you have an executive board meeting on Sunday afternoon? A Yes, we did.

Q. What action was taken at that meeting?

A. At that time the executive board instructed Mr. W. J. Chudleigh, who was our president at that time, to file charges with the National Labor Relations Board against the company in respect to violation of our agreement.

Q. Did you attend any meetings in your official union capacity with respect to interim individual increases of employees?

A Yes. I attended one in January and——

Q. What happened at that meeting?

A. At that meeting it was brought out by the union that the company, in the form of Mr. Laddon,

(Testimony of L. A. Perry.)

had issued, in [341] November, right after we had received a blanket increase in pay, had issued a memorandum to the department heads which, to the best of my recollection, read somewhat as follows: That the foremen were not allowed to give interim increases in pay at that time.

We objected seriously to that, and Mr. Laddon agreed to withdraw that, in the form of another directive to the department heads, which directive would be that they could grant interim individual increases in accordance with our contract.

Q. Did you attend any meetings at which the overhead crane operators were discussed?

A. Yes, sir.

Q. When was that meeting held?

A. The meeting was held, to the best of my recollection, early in February at the parts plant, in the conference room there.

Q. What occurred at that meeting?

A. At that time that we brought up the overhead electric crane operators, we called to the attention of the company that action by the company and the union committee may, in connection with our 1941 review, that there had been established a basic rate of pay for crane operators, and that it had been applied in the case of the crane operators that at that time were working in the home plant; but the crane [342] operators that were transferred to the parts plant, after it opened there in July of 1941, that that rate did not hold good.

And the comment was made by George Newman,

(Testimony of L. A. Perry.)

plant manager, that he intended to run the plant as he saw fit.

Q. Did you take any further action on the matter?

A. On the matter, we had a series of grievances, and in the course of action on these grievances did address a letter to the company, to go into the step of our agreement that calls for arbitration under Article 23.

Q. Who addressed that letter?

A. I addressed it to Mr. Wiseman.

Mr. Harrington: Will you please mark this as Board's next exhibit for identification?

(The document referred to was marked as Board's Exhibit No. 19 for identification.) [343]

Trial Examiner Hektoen: On the record.

Q. (By Mr. Harrington) I show you this letter which I have had marked as Board's Exhibit 19, and ask you if you have seen this letter before?

(Handing exhibit to the witness.)

A. Yes, I have.

Q. And what is that letter?

A. That letter is a letter I sent to Mr. Wiseman.

Q. And what is the date?

A. It is dated on the 21st day of February 1942.

Q. Signed by you? A. Signed by me, yes.

Mr. Harrington: I offer Board's Exhibit 19 for identification in evidence as Board's Exhibit 19.

Trial Examiner Hektoen: Any objection, Mr. Riggs?

(Testimony of L. A. Perry.)

Mr. Riggs: None.

Trial Examiner Hektoen: It may be admitted without objection.

(The document heretofore marked for identification as Board's Exhibit No. 19 was received in evidence.)

BOARD'S EXHIBIT No. 19

(Copy)

Consolidated Aircraft Corporation

Lindbergh Field, San Diego, Calif.

(Letterhead of the Aeronautical Mechanics
Lodge 1125)

February 21, 1942

Re: Base Rate for Overhead Crane Operators

Mr. H. R. Wiseman,

Labor Relations Director,

Consolidated Aircraft Corporation,

San Diego, California

Dear Sir:

More than two weeks have elapsed since your attention has been called once more to the series of grievances relative to the failure of the company to put in force a basic hourly rate for all Overhead Electric Crane Operators which is now 93c per hour, which rate was agreed to between the Union and the Company as follows: the base rate of 75c per hour was set in conference between the Union and the Company in May 1941, plus a blanket in-

(Testimony of L. A. Perry.)

crease of 5c per hour, agreed to between the Union and the Company on June 12, 1941, plus a blanket increase of 13c per hour agreed to between the Union and the Company on October 11, 1941.

Immediate action on the part of the Company on the subject matter involved was requested by the undersigned. To date, no apparent decision has been handed down, therefore, we are taking this means of notifying the Company to designate two members to the Board of Arbitration to match two of our Representatives as outlined in Section 23 of our Agreement, to meet not later than Wednesday evening, February 25, 1942, for the express purpose of considering the evidence presented.

Very truly yours,

AERONAUTICAL MECHANICS

LODGE 1125

s/ L. A. PERRY

Business Representative.

LAP:ap

Q. (By Mr. Harrington) Did you receive any reply from Wiseman to this letter?

A. No, I didn't receive a written reply.

Q. Did you receive a verbal reply? [344]

A. I did upon calling him by telephone.

Q. And what happened at that time?

Trial Examiner Hektoen: And when was it?

Mr. Harrington: Yes.

(Testimony of L. A. Perry.)

The Witness: That call by telephone was approximately three days afterwards, to the best of my recollection. I waited that length of time for a reply and the company at that time was not replying in writing for some unknown reason.

Trial Examiner Hektoen: What did Wiseman say?

The Witness: As far as the reply to the letter was concerned, Mr. Wiseman statement by telephone was that the company had nothing to arbitrate and were not going to set up a committee for that purpose upon our request.

They considered that the matter was entirely irrelevant and they were not going to consider it.

Q. (By Mr. Harrington) Was there any more to the conversation?

A. The conversation at that time—I do not recall any additional item.

Q. Has anything been done about that matter since?

A. After that I consulted with Mr. William R. Walsh of the National Labor Relations Board relative to section 8(5) of the National Labor Relations Act, asking him inasmuch as I was rather new at the job just how to go about handling a situation of that kind. [345]

Mr. Riggs: I object to this.

Mr. Harrington: Well, I may be able to shorten this then by asking what is the status of the matter at the present time. That is what I was really after.

The Witness: The status of the matter at the

(Testimony of L. A. Perry.)

present time was that we had decided that the Wage Review, which we had negotiated in the contract since January 1st, was to take care of that item and the company agreed to let it go at that.

Q. (By Mr. Harrington) That is the status at the present time?

A. That is the status of the case today and while it didn't meet with our approval, nevertheless, we were not in a position then to say that we should go on to the fullest extent. It would not be practical.

Mr. Harrington: I have no further questions.

Cross Examination

Q. (By Mr. Riggs) Well, has the Wage Review Board taken up and considered the case of Crane operators since that time?

A. They have considered the cases of crane operators. There was some interim adjustment made in crane operators. The company was not adverse to doing that as far as I could tell.

However, they did not adjust them on the basis that they were set forth in the conference of May 1941, however.

Q. They didn't adjust them upon that basis but they adjusted them upon some basis after negotiations with the union? [346]

A. Yes, in a general line with other types of employment.

Q. Now, does the matter come up before the Wage Review Board according to the contract every six months? A. That is correct.

(Testimony of L. A. Perry.)

Q. When each man is reviewed, is that correct?

A. That is correct. It was felt the continuous Wage Review would eliminate considerable of this type of grievance, we might say, wage grievances.

Q. Now, in October 1941 everyone in the company received a blanket increase of 13 cents per hour, did they not? A. That is correct.

Q. And it was subsequent to that blanket increase that Mr. Laddon published a notice to the effect they were not going to have any more interim increases until the six months review came around, wasn't it?

A. There was no such a thing then as a Wage Review. We subsequently negotiated that after the first of the year.

Q. Is this a copy of the memorandum, that I show you, that you refer to in your testimony about stopping interim increases?

(Handing exhibit to the witness.)

A. I believe that that is the one because the date seems to be very familiar. However, the subject matter as to detail is not.

Trial Examiner Hektoen: Referring to Board's Exhibit what?

Mr. Riggs: This is a respondent's exhibit and I asked [347] to have it marked for identification as Respondent's Exhibit No. 4. It is a memorandum to all department heads dated November 11th, 1941.

"Subject: Policy with regard to interim wage increases," and it is signed by I. M. Laddon.

(Testimony of L. A. Perry.)

(The document referred to was marked as Respondent's Exhibit No. 4 for identification.)

Mr. Riggs: I offer that in evidence.

Mr. Harrington: No objection.

Trial Examiner Hektoen: It may be admitted without objection.

(The document heretofore marked as Respondent's Exhibit No. 4 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 4

(Copy)

No. 8

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.

November 11, 1941

Memorandum to All Department Heads

Subject: Policy with Regard to Interim
Wage Increases

My understanding of Major Fleet's instructions with regard to interim wage increases is that there are not to be any and the current review is to take care of all salaried and hourly employees until April 1942. The one exception to the above rule is change of status of the employee, e.g., when a mechanic is promoted to leadman or leadman to supervisor or assistant foreman. In such cases the employee shall be on probation for a period of four weeks and in the event that he proves capable of handling the increased responsibility, a non-retroactive increase may be put through defining the change in status. Such increases, whether hourly

(Testimony of L. A. Perry.)

or salary, are to be OKhed by Major Fleet or, in his absence, by myself.

(s) I. M. LADDON

P.S. For your own guidance only and not for general distribution.

Copy to: F. A. Learman

D. G. Fleet

W. Shanahan

C. T. Leigh

R. Mayer

IML:R J. C. Kelley

J. Thompson

Geo. Newman

Q. (By Mr. Riggs) This bulletin speaks of the current review which was then going on, doesn't it? Does that refresh your recollection that there was such a thing?

A. The current review was referred to—no doubt it is the review that was to have taken place in accordance with the agreement prior to the time that he blanket increase was negotiated.

Q. And also the agreement provided that there should be a review every six months, didn't it?

A. I believe that that is correct as near as I can recall.

Q. And this provided or states that there wouldn't be any review, that the current review will take care of everybody [348] until April of

(Testimony of L. A. Perry.)

1942 and that was for the next six months period, was it not?

A. Yes. The blanket increase was to take care of that particular review period as well.

Q. And the union objected to this in the conference with Mr. Laddon in January?

A. Objected to that attitude on the part of management.

Q. That there would be no interim increases?

A. Yes.

Q. And Mr. Laddon reversed himself in an exhibit that is in evidence here, I believe?

Mr. Riggs: That is, they objected to the attitude that there would be no interim increases between the six months period?

The Witness: Yes, sir, as it was contrary to the terms of our agreement.

Q. And Mr. Laddon issued a memorandum in accordance with the union's position?

Trial Examiner Hektoen: On January 22nd, is that correct?

Mr. Riggs: Yes.

Trial Examiner Hektoen: Which is Board's Exhibit 7.

Q. (By Mr. Riggs) Are you familiar with that, Mr. Perry?

A. I am familiar with that one although it was issued somewhat later than it was agreed to there at the meeting, however. [349]

Q. Now, when you had a meeting of the union committee on Saturday, December 13th, when you

(Testimony of L. A. Perry.)

heard about the circularization of this petition, did you say that the union committee agreed to let the members work on Sunday for time and a half?

A. The committee agreed to allow the members to work and we would discuss what they were to be paid later.

Q. There was no agreement on the part of the union that they should receive time and a half?

A. No. The only discussion there was as to whether or not we were to picket that place and we decided in the emergency—everybody was a little bit upset as you probably realize, and we had to try and keep a cool head there because our membership naturally wouldn't know just exactly what to do, so we clarified the situation and that is why we passed out the handbills in the morning relative to telling them to go to work but be sure and punch their time clocks.

Q. Well, then in the afternoon of Sunday did you have a meeting which reversed the previous action?

A. No. It just merely clarified what we intended to do. In other words Saturday we didn't know just exactly what we were going to do.

Q. Do you know whether anybody worked on that Sunday? A. Yes, they worked.

Q. What did they receive; time and a half or double time?

A. They received their double time in accordance with the [350] contract at a later date.

Q. So that everybody that did work and wanted

(Testimony of L. A. Perry.)

to work received, eventually, the double time for that particular Sunday?

A. Yes, sir. The reason that we contacted these employees by handbills to punch their timecards was that we wanted evidence on record of that time.

Q. And there were certain departments that were circularized in which there were bottlenecks in which the union knew about it?

A. I believe there were certain departments that did work because there were certain things there they were behind in.

Q. Well, what we would call bottlenecks that had to be gotten up to the current production?

A. That is correct.

Mr. Riggs: I have nothing further.

Redirect Examination

Q. (By Mr. Harrington) Mr. Perry, I believe you said that the crane operators cases had been adjusted in wage conferences. Have those been individual adjustments? A. They have.

Q. Or mass adjustments?

A. They have. As soon as this action on the part of Mr. Wiseman was consummated then we debated with Mr. Walsh as to the exact action and his statement was that the National [351] Labor Relations Board—

Mr. Riggs: I object to what Mr. Walsh said.

Trial Examiner Hektoen: Sustained. You say they have been settled on an individual basis?

The Witness: They have been settled on an individual basis, to the best of my knowledge.

(Testimony of L. A. Perry.)

Q. (By Mr. Harrington) As to Respondent's Exhibit No. 4 from Mr. Laddon to all department heads, stating that there isn't to be any more interim wage increases, was this matter taken up with the union before it was put into effect?

A. No, it wasn't.

Q. The union was not consulted on the matter?

A. No.

Mr. Harrington: I have nothing further.

Trial Examiner Hektoen: That is all; thank you.

(Witness excused.)

Mr. Harrington: Mr. Examiner, I seem to have run out of witnesses. Mr. Phillips tells me he is trying to get them. I have three more witnesses.

Trial Examiner Hektoen: We will be in adjournment until such time as they appear.

(Thereupon, a short recess was taken.)

Trial Examiner Hektoen: The hearing will be in order.

There being no further witnesses available this afternoon, by common consent we are adjourned until 10 o'clock [352] tomorrow morning.

(Whereupon, at 4:10 o'clock p.m., September 2, 1942, an adjournment was taken until 10 o'clock a.m., Thursday, September 3, 1942.)

[353]

(Testimony of L. A. Perry.)

Conference Room,
Chamber of Commerce Building,
San Diego, California,
Thursday, September 3, 1942.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a.m. [354]

Trial Examiner Hektoen: We will be in order, please.

Mr. Harrington: Mr. Shannon.

EVERETT MARTIN SHANNON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) What is your name?

A. Everett Martin Shannon.

Q. And your address?

A. Curtis Apartments, 525 Kalmia Street.

Q. Are you here in response to a subpoena?

A. Yes, sir.

Q. Are you an employee of Consolidated?

A. Yes, I am.

Q. What type of work do you do?

A. Timekeeping.

Q. How long have you been employed there?

A. Just about two years.

Q. Are you a member of the union?

A. Yes, I am.

Q. How long have you been a member of the union?

(Testimony of Everett Martin Shannon.)

A. It will be close to two years, a good year and a half.

Q. Do you hold an official position in the union?

[356]

A. I am committeeman in the timekeeping department, 52.

Q. How long have you been a committeeman?

A. Six months.

Q. What are your duties as committeeman?

A. Well, they are primarily to sit in on wage reviews to handle grievances and sign any wage increases, interim increases.

Q. Who do you sit in on wage reviews with?

A. Mr. Shannahan.

Q. What is his title?

A. He is treasurer of the company. He is head of the accounting department under which we are.

Q. Have you had discussions with Mr. Shanahan during wage reviews?

A. Yes, many of them.

Q. When would this be?

A. I have had them before wage reviews.

Q. When were the wage reviews held?

A. They have been following on about the first day or so of each month. We are at the beginning of the months always; like, I go in again tomorrow.

Q. When was the last wage review?

A. It was at the beginning of last month; yes, the first week of July—August.

Q. Have you had a discussion with Shanahan during those [357] wage reviews concerning the union?

A. Yes, sir.

(Testimony of Everett Martin Shannon.)

Q. When was that?

A. Generally preceding going into the wage review room,——

Q. Can you place before which wage review it was?

A. Yes, before the very first wage review I know we had a discussion.

Q. When was it?

A. That would have been in April.

Q. Where was that discussion?

A. That was in an ante-room just off the wage review room.

Q. And who was present?

A. Mr. Shanahan and myself.

Q. What was said in that conversation?

A. As I remember it, the first thing he said was that: "What do you want to be in this for anyway? Do you know," he said, "I have had you older men in the timekeeping department in line for advancement." And he said, "You know you are sacrificing your chances for advancement."

Q. Was anything else said?

A. Yes, there were. There were many other things.

Q. I mean with respect to this subject.

A. Well, he also suggested why didn't I drop it. What was it going to get me.

Trial Examiner Hektoen: What did he say? We want it [358] in his own words, so far as is possible.

The Witness: That's hard to place, exactly.

(Testimony of Everett Martin Shannon.)

Q. (By Mr. Harrington) Tell us what he said as closely as you can.

A. He said: "What's it going to get you?"

Q. Did you say anything to that?

A. Yes. I said, "I have been there a year and a half and it hadn't got me much up to that point."

So, I said, "It wasn't for what it was going to get me, that I was there in the capacity of a representative, or spokesman, of the group I represented, and as a union representative, and he shouldn't take it out on the men." I made that very clear from the beginning.

Q. Was there anything else said in that conversation on this subject?

A. No, I wouldn't say there was any more. I think that covers it.

Q. You say you have had many conversations with him. When was the next one?

A. It was preceding the next review.

Q. That would be when? A. In May.

Q. Where was that conversation?

A. That was in the same room.

Q. Who was present at that one? [359]

A. Mr. Shanahan and myself.

Q. What was said in that conversation?

A. Well, the first thing in that conversation was that he hauled out his list of men that were up for wage review and asked me if I wouldn't sign the raises.

Q. Did he say anything else?

A. Well, yes. He suggested we go into the wage

(Testimony of Everett Martin Shannon.)

review room, that we bicker and argue so much and don't get any place; and he suggested we could eliminate that and do it right there.

He has always been very busy and he hasn't had time, and he evidently wanted to get going.

Q. Did you make a reply to that?

A. Yes, I did. I said I couldn't do that even if I had wanted to. It was to be done in the wage review room in the presence of other witnesses for the union and the company.

Q. Was there any further conversation?

A. Well, he tried to insist, and give me the list to look over, and he said they were going to get raises. They weren't.

Mr. Riggs: What was that?

The Witness: They weren't.

Q. (By Mr. Harrington) Did you have any other conversation with Shanahan about wage review?

A. Well, he went into all of the cases that are up for the Court here, I believe, in regard to—he wanted me to understand why all these men were shifted around. He said it was [360] not union intimidation.

Q. What do you mean by the men being shifted around?

A. He was telling me about all these cases, explaining them to me.

Q. What were those cases?

A. Barnes, Blake, Al May, timekeepers that had been shifted in departments.

(Testimony of Everett Martin Shannon.)

He said he had been accused of intimidation and he asked me if I had been intimidated, and I said: "Not so far, I guess."

Q. Did you have any other conversation with him about wage reviews?

A. Yes, I did. I believe it was following that very review.

Q. That would be about when?

A. That would be June.

Q. Where was that?

A. That was right outside the front of the building on his way out.

Q. Who was present?

A. Mr. Shanahan and myself.

Q. What occurred at that time?

A. Well, he told me in no uncertain terms that I was to stay out of the tabulating and auditing departments. I had been in to contact the union men that were on my wage review list which I had a right to do. I wanted to see what work [361] they were doing and what their lead men had to say of their abilities.

Q. Just what did he say, so far as you can recall?

A. He threatened me then. It is something very vague to me, but to the effect——

Mr. Riggs: I object to that.

Trial Examiner Hektoen: Objection sustained. We want to have his words, rather than your conclusions.

(Testimony of Everett Martin Shannon.)

Q. (By Mr. Harrington) Give us his words as nearly as you can recall them.

A. He told me I was treading on thin ice. He said he could make trouble for me, probably get me removed as committeeman. I couldn't understand it at all. [362]

Q. Did you understand what he meant by making trouble for you?

A. Well, yes. He was threatening me to keep out of the auditing and tabulating departments.

Q. He was threatening you? What did he say? That is what we are interested in.

A. I was told in no uncertain terms that I was not to go in there.

Q. Well, had you gone into the tabulating department? A. Yes, I had.

Q. And why had you gone in there?

A. I went in to contact these men on my wage review list every month to see what type of work they were doing and in what regard their work was held so I knew how better to deal with them in the wage review.

Q. Are you permitted to do that?

A. Yes, sir.

Q. By whom? I mean who had given you permission to contact these men?

A. Well, I would tell Ted Ellis, the head time-keeper.

Q. And you have had permission before?

A. Yes, sir; and then I also went to see the foreman in the department there, Art Andres.

(Testimony of Everett Martin Shannon.)

The Reporter: How do you spell that?

The Witness: A-n-d-r-e-s. I am not really sure of [363] that.

He also told me at that time that——

Q. Who, Shanahan?

A. In reference to this—Shanahan—that he had been in—he did go into the tabulating department immediately following the review and then came back and we walked out together; that he had been talking to Art Andres and Art Andres had a signed statement that I had been in there trying to coerce the men into joining the union.

Q. Did he explain what he meant by “coerce”?

A. Yes, that I had no business to contact those men to try to get them to join the union.

Q. Well, had you done so?

A. All I did—all I did was I went in to find out which were union members and which were not and at the time I asked them if they cared to be a union member and have me represent them as a union member.

Q. And for what purpose did you ask them that?

A. So I could represent them better.

Q. Did you have any further—any other conversations with Mr. Shanahan?

A. Before that, though, I went in to see Art Andres. Immediately following that Art said, “Well, look around.” He said, “Do you see anything here?” and I said, “No,” and he said, “I have nothing.” [364]

(Testimony of Everett Martin Shannon.)

Trial Examiner Hektoen: What does that mean?

The Witness: He had no statement.

Q. (By Mr. Harrington) Did you have any conversation with Shanahan—any other conversation about your union activities? A. Yes, I did.

Q. When was that?

A. That, I would say, was in June down at Mr. Shanahan's office in Plant No. 1.

Q. Who was present?

A. Just the two of us.

Q. What occurred there?

A. Well, I brought down two interim raise slips, I believe you would call them, where he wanted to—he sent up a four cent raise and a five cent raise for a Mr. Mason and Kreutschamp.

The Reporter: How do you spell that name?

The Witness: K-r-e-u-t-c-h-a-m-p—it is on that order.

Q. (By Mr. Harrington) Proceed.

A. And I was going down to see him in regard to his asking that I sign those interim wages increases.

Q. For those two men?

A. For those two men. Well, then, the first thing he said to me when I came in was, "Did you sign those raises?" [365]

Q. And did you make reply to that?

A. Yes, I did. I said, "No, not yet." I said "I wanted to talk to you about them first."

Q. And then what occurred? Was there a further conversation?

(Testimony of Everett Martin Shannon.)

A. Yes, there was. And then he said, "I didn't think you would sign them." He said, "That is why they were sent up to you; I was told that you would not sign them."

Q. Did he say who told him that?

A. No, he didn't.

Q. And then what happened?

A. Well, then, I went on to say that I hadn't said that I wouldn't sign them, but in all fairness to the union men I represented that were doing like work and men of like ability, that I had a list of those men down there that I felt should be given the same treatment. In other words, I did not intimidate the non-union man when he offered 7 cents for those men in the review. I had taken it with no objection, and that wasn't enough and one of the men had written a letter to Mr. Shanahan.

Q. Was there any further conversation at this time between you and Mr. Shanahan?

A. Yes, there was. He threatened that I should sign those before I left that room.

Q. Well, what did he say? When you say "he threatened" what did he say? [366]

A. He said, "You sign those raises before you leave this room."

Q. And then what happened?

A. I told him I would be glad to if he would take care of the union men in the same position, and I wanted to show him the list. He refused to even look at the list or to have anything to do with it. He went on along on a lengthy verbal barrage and raked me from stem to stern.

(Testimony of Everett Martin Shannon.)

Q. Can you tell what he said? We want his exact language as far as you can remember—as closely as you can remember.

A. I couldn't repeat that language very well.

Trial Examiner Hecktoen: Yes, you can. Tell us the best you can what he said.

The Witness: It didn't all have a bearing on this, I don't suppose.

Trial Examiner Hektoen: Never mind that, tell us what he said and don't be squeamish about any language.

The Witness: Well, he said to me, "Why don't you drop this whole thing?" I said—he said, "Drop the whole thing or get out of the department." He said, "Let someone have it that can handle it." He said, "I can't deal with you." He said, "We can't get together." He said, "You are the only committeeman that takes all these cases up to the master board," and he told me to go home and look at myself in the mirror. He said he didn't see how I could go away with [367] a conscience like that—didn't it bother me, and I said, "Absolutely not," it didn't.

It was all along those very lines. He was in a very ill mood.

Q. (By Mr. Harrington) What do you mean when you say "Take them up to a master board"?

A. Well, you see if the wages as offered by him are so terribly unsatisfactory in our mind and in the minds of the wage review board we, as a unit, either suggest passing it on to the next higher

(Testimony of Everett Martin Shannon.)

board or Mr. Shanahan's refusal to negotiate automatically sends it on up.

Q. Was there any other further conversation at that time?

A. Well, he did tell me when I left, he said that "You have those lists in and signed by tomorrow noon."

Q. And what happened then?

A. And he also said that he would get—he could give raises to anyone he wanted to, whenever he wanted to, and no one was going to stop him.

I told him that wasn't the idea of the thing. I said, "There is a regular procedure which you could go through to give these interim raises."

Q. Did anything else happen then?

A. I think that pretty well covers it.

Mr. Harrington: I have no further questions.

[368]

Cross Examination

Q. (By Mr. Riggs) When these interim increases come up, they come up first in a recommendation by the foreman of the department, do they not? A. Yes, sir.

Q. And those are supplied to you, those recommended increases?

A. To the board, to the wage review board.

Q. They are supplied to you or the board first, which?

A. It is just given out to all of us.

Q. All of you? A. (No response)

Trial Examiner Hektoen: This is a good point

(Testimony of Everett Martin Shannon.)

to spell this out. Let us find out who "All of us are" and all that.

Q. (By Mr. Riggs) In the wage review board, with reference to the accounting department—now confine yourself to the accounting department, as I understand it the department 52 of the accounting department is all located at the Parts Plant, is that correct? A. 52; yes, sir.

Q. And department No. 2 is located at Plant No. 1? A. That is right.

Q. Now, did you as committeeman have anything to do with the accounting employees outside of department 52? A. No. [369]

Q. Now, when these recommendations of the foremen for increases were handed to the board, what did the wage review board of Department No. 52 consist of?

A. Myself and two union members.

Q. Who were they?

A. Well, they varied depending on who the board was. They have changed the board a good deal and shifted the members.

Q. Who has changed the board? You mean the union representatives have been changed?

A. Yes, the executive board, sir.

Q. You mean the union has changed its representatives upon the board a good deal?

A. Yes, sir.

Q. Who were the company representatives?

A. If they were given to me I could remember their names.

(Testimony of Everett Martin Shannon.)

Trial Examiner Hektoen: Well, that isn't so important. How many are there? Are there three of them, too?

The Witness: About the first three reviews Mr. Shanahan and the company's attorney, I understood it was—I don't know, but at least I understood that.

Trial Examiner Hektoen: How many representing the company sat with you three union people?

The Witness: I would say two sometimes and then he had Mr. Vernon with him sometimes. That was on later reviews.

Q. (By Mr. Riggs) So the board consisted of three? You [370] always represented the union, didn't you? A. Yes, sir.

Q. And—as a committeeman?

A. Yes, sir.

Q. And the other two members changed from time to time? A. Yes, sir.

Q. And Mr. Shanahan, the head of the department, was he always there?

A. He was always there, yes, sir.

Q. Sometimes with one or two other people representing the company? A. Yes, sir.

Q. Now, when you got this list of recommendations made by the foreman, what did you do with it?

A. Well, they were given out one at a time. We discussed one at a time. You see, it is supposed to be an individual matter?

Q. I know that, but how did you know the names

(Testimony of Everett Martin Shannon.)

of the people that were going to come up in the wage review board?

A. Oh, I am furnished a list by the union of the men.

Q. That is what I mean. A. Yes, sir.

Q. How many days before the wage review board met would you be furnished with a list?

A. Oh, two, three, or five days—around there.

[371]

Q. Now, when you got that list I believe you went into the department, I think you said, to find out which were union and which were non-union men? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you talked to all of the men involved to see their qualifications for a raise?

A. Yes, sir.

Q. As to what they were doing?

A. Yes, sir.

Q. And I also think you said that when Mr. Shanahan offered seven cents for non-union men that you agreed right away. Is that right?

A. Yes, I did.

Q. And if it was a union man you didn't agree at once at all, did you?

A. Not always, sir, no.

Q. If he offered seven cents for a union man you insisted that he ought to get 15 cents?

A. There were a couple of union men that only got 7 cents.

(Testimony of Everett Martin Shannon.)

Q. I am not asking you that. I am asking if you didn't do that in every instance?

A. They didn't get any less——

Q. You listen to me. I am asking you if in every instance [372] where a non-union man was recommended for an interim wage increase by his foreman, that the union didn't accept it instantly?

A. I did.

Q. Except in the cases of Mason and Kreut-champ?

A. I did. I accepted them instantly.

Q. In all others you accepted them right away?

A. No, sir.

Q. Tell me what you did with them.

A. We negotiated first.

Q. And in the cases of union men who were recommended for a raise, say of 7 cents, wasn't it your invariable custom to demand that they get a larger amount?

A. I generally did try that, sure.

Q. Wasn't it invariable that in the case of a union man you demanded more money?

A. If their work was of better ability.

Q. No, you answer me. You tell me any case.

A. I base this on merit, the whole thing, union or non-union.

Q. You answer me. Any case of a union man who was recommended for a raise by his foreman while you have been committeeman, that you didn't ask the wage review board to give him more than the foreman recommended?

(Testimony of Everett Martin Shannon.)

A. I could if I had my list here with me. There were a lot [373] of them I took his recommendations. I wouldn't say "a lot" but there were some.

Q. How many out of ten? One?

A. That may be it. It all depended on the type of men that came up, sir. If they were new-hires we took 7 or 8 and therefore they got the same as the others.

Q. Mr. Shannon, listen to me. You are under oath. Will you swear that there was any case specifically that you can bring here tomorrow and show the examiner where the foreman had recommended a union man for an increase that you did not, on behalf of the union, ask the shop committeeman to demand more than that amount for that man?

A. Yes, sir; I can bring some.

Mr. Ryan: Mr. Examiner, I think that is wholly immaterial. This man was bargaining on behalf of the union; he wasn't bound by anything the foreman recommended. If he were the foreman would be the bargaining agent for the union.

Mr. Riggs: He was representing the bargaining agent for all the men in the plant, union or non-union and I propose to show that Mr. Shanahan's remarks were directed to preventing discrimination by the union against non-union men and coercion of non-union men to join the union.

The Witness: May I make a statement, sir?

Trial Examiner Hektoen: No, you have answered that question. You say you can furnish names of people whom you [374] didn't insist get

(Testimony of Everett Martin Shannon.)

more money than the rates recommended by the foremen?

The Witness: That is right, I can.

Trial Examiner Hektoen: All right.

Q. (By Mr. Riggs) When you contacted——

The Witness: But I want to say——

Q. (By Mr. Riggs) When you contacted the non-union men in the department to see whether the work they were doing would justify a raise, did you suggest to them that they might join the union?

A. Yes, sir; I did.

Q. Did you tell them that if they did join the union they would get a bigger raise?

A. No, sir. I told them I would—that is one thing we are not allowed to do, sir.

Q. Well, whether you are allowed it or not?

A. No, sir.

Q. Can you state that there was no occasion when you contacted a non-union man in your department about an interim raise that you didn't tell him if he joined the union you would see that he got a bigger raise than that recommended?

A. I always told them I would try.

Q. You always told them that you would try to get them a bigger raise than that recommended if they would join the union? [375]

A. I told them I would try to do the best I could do for them.

Q. If they would join the union?

A. No, sir.

Q. You never added that?

(Testimony of Everett Martin Shannon.)

A. You want me to tell you what—do you want me to tell you what I told them?

Q. I am trying to ask you in my own way as to what you told them.

A. If you will let me tell it in my own words I can tell it, sir.

Q. Did you, in talking to these non-union men—you say that you said you would try to get them a greater increase than that recommended if they joined the union?

A. No, sir; that isn't what I said, sir.

Q. What did you say?

A. I said I would go in and represent them as a union member.

Q. That on behalf of the union you would represent them and that you would try to get them a bigger increase than was recommended?

A. Yes, sir; that I thought I could better represent them.

Q. There was no suggestion made by you that they should join the union as the price of your representing them?

A. No, sir, never. There was no intimidation, never; no, [376] sir.

Q. Whether that was intimidation or not, did you suggest that they would get a better deal from the wage review if they joined the union?

A. No, sir.

Q. Now, didn't the wage review board operate in this way, that where a non-union man was recommended for a raise of 7 cents that the union com-

(Testimony of Everett Martin Shannon.)

mitteeman immediately agreed to that in almost all instances?

A. I wouldn't know, but I know I did. [377]

Q. Now, when it came to a union man being recommended for an increase, you first contacted—strike that if you please.

When it came to a union man being recommended for an increase, you would almost invariably, except in the cases you were going to bring in tomorrow, specifically suggest that you get more than the amount that the foreman recommended?

A. I would try, sir.

Q. Didn't that usually result in a compromise on the wage review board, with reference to the union man, so that they got more for the same kind of work than the non-union men got from the same board? A. Some did, some didn't.

Q. In a great many cases it would result in that way, wouldn't it? A. Yes, it would.

Trial Examiner Hektoen: Let this be off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Q. (By Mr. Riggs) In May you say Mr. Shannon gave you, there was a list given to you of proposed wages to come before the wage review board, and he asked you to sign them without going through the machinery of the wage review board, and you refused, and stated they were not good raises. What do you mean by that?

(Testimony of Everett Martin Shannon.)

A. They were very unsatisfactory, but that's immaterial. [378]

Q. In what way were they unsatisfactory?

A. Why, they were three cents, and on that order. You see, I would be the judge of that. I know those men and their abilities, sir.

Q. You mean none of the raises were good raises? A. That is right.

Q. Did that list consist of union or non-union men, or both?

A. There have been very few non-union men. I believe there were only two: Mr. Mason and Mr. Kreutchamp.

Q. And they were the only two non-union men that you could recommend for interim raises, you mean? A. Yes, sir.

Q. During all the time you have been in office?

A. Yes, sir, and they were given the same as the others. It was no less. Therefore, I represented them as well as the union men. That's the point I wanted to bring across.

Q. I don't understand you when you say you got these lists monthly and you contacted the union and non-union men in the departments. You mean to say there were only two non-union men ever recommended for a raise?

A. We have signed all the men up. They are all union men, sir. I have worked.

Q. Were they signed up before or after this wage review board dealt with that in individual cases? [379]

(Testimony of Everett Martin Shannon.)

A. There were always members before the wage review.

Mr. Harrington: I think that once again we are getting too far afield.

Trial Examiner Hektoen: It seems to be just about concluded.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything more, Mr. Harrington?

Redirect Examination

Q. (By Mr. Harrington) When you went in to contact these men in the department, who sent you in, when you went in to contact them for wage reviews?

A. I told Ted, Ted Allison, the timekeeper, that I was going in to contact these men.

Q. What did you base your request for wage increases on?

A. On ability, on the job they were doing.

Q. What statement did you want to make during the cross examination?

Trial Examiner Hektoen: He has made it.

Q. (By Mr. Harrington) You have?

A. That was the idea, that there were other men that got 7 cents that were union men, so I say that they didn't get less than some of the union men, and I thought that was very satisfactory action on my part.

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all. [380]

(Testimony of Everett Martin Shannon.)

Trial Examiner Hektoen: Let me ask some questions about this wage review thing.

Q. (By Trial Examiner Hektoen) Now, when a foreman makes his recommendations, is that list given directly to the union?

A. No, he has the list in front of him, sir.

Q. You find out about it four or five days ahead of time? A. Yes, sir.

Q. You say you found out about it from the union. Is that right?

A. I would presume it comes through the Labor Relations office, I believe, at Consolidated, Harry Rubin is the man.

Some of the union members or business agents could answer that better than I can.

Q. You get it through one of them?

A. Yes, I either get it through the hall—it is sent up, yes, sir.

Q. You and two others in your department,——

A. Not in my department, sir; they are permanent wage review members.

Q. You and two other union members, and Shanahan and one or two people for the company, get together and go over the thing?

A. Yes, that is the purpose of it.

Q. If you don't iron it out there, it goes to a master [381] committee of some sort?

A. Yes, there is a master board set up for cases that cannot be agreed upon between the company and the lesser board.

Q. Have you any experience with it?

(Testimony of Everett Martin Shannon.)

A. Yes, I have, a good deal.

Q. Is that procedure in here?

(Discussion off the record.)

Trial Examiner Hektoen: I have found it in the agreement, Mr. Shannon, and I don't need to pursue the thing any further.

Anything else?

Mr. Riggs: Yes. There is an intermediate step you skipped. That was when he gets the list, he visits his department and contacts the men and ascertains whether they are union or non-union men.

The Witness: The only ones I had to visit was the auditing and tabulating departments, because I am not acquainted with them. In the timekeeping department I know every one of them.

Redirect Examination

Q. (By Mr. Harrington) Mr. Shannon, are the names submitted to you or the amounts, or both, or either?

A. Yes, it is alphabetical.

Q. The list of names? A. Yes. [382]

Q. Are the amounts of the increases submitted to you?

A. Yes. He first submits what he has to offer.

Q. I see. Are the amounts submitted at the same time the names are submitted to you?

A. Yes, sir. He reads the name off. He has the sheet——

Q. You get the sheet before you go to the wage review board, don't you? A. Yes.

(Testimony of Everett Martin Shannon.)

Q. Do you get the amounts too, before you go in?

A. No, sir. I go in with an attempt to negotiate. I have no idea as to amounts. I may have some tentative figures.

Q. Where do you get those?

A. Where do I get those, sir?

Q. Where do you get the tentative figures?

A. You have to have an idea what you are going to ask for those men.

Q. I see. All you know when you go in there, in the absence of investigation by yourself, is that there is a list of, say, 7 or 10 people who are going to be talked about with reference to wage increases. Is that right?

A. Yes, sir. I know their duties and abilities.

Q. What we want to know is what is the information received by you, your union, from the company, whether that includes the tentative amount of the increases.

A. No, sir, that isn't there at that time. [383]

Q. All right.

Recross Examination

Q. (By Mr. Riggs) The first time you know the foreman's recommendations is when you get into the board? A. Yes, sir, that is right.

Q. At that time you know whether a man is a union or non-union man?

A. Yes, sir, I know.

Q. When he makes his recommendations, you are prepared to either accept it or ask for more?

(Testimony of Everett Martin Shannon.)

A. Yes, sir.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Thank you, Mr. Shannon.

(Witness excused.)

Mr. Harrington: Mr. Thomas.

HERVEY H. THOMAS

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) What is your name?

A. Hervey H. Thomas.

Q. And your address?

A. 2244 G. Street.

Q. Are you employed by Consolidated? [384]

A. Yes, sir.

Q. For how long have you been employed?

A. About 27 months.

Q. Are you a member of the union?

A. Yes, sir.

Q. And how long have you been a member?

A. Between 26 and 27 months.

Q. Do you hold any position in the union?

A. Committeeman.

Q. Where are you shop committeeman?

A. Department 96, jigs and fixtures.

Q. How long have you been a committeeman?

(Testimony of Hervey H. Thomas.)

A. Very close to a year, maybe 10 months; it might be a little less or more.

Q. As union committeeman, do you on occasion have to leave your department on union business?

A. Yes, because the department is scattered all over the parts plant, and I very often have to go all over the building.

Q. What is your practice when leaving the department?

A. My practice is to go to the general foreman or assistant foreman and notify him I am going to leave, and that's the general practice; always going to him. He has stated to me when I become committeeman, I could leave at any time I wanted to, provided I didn't abuse that privilege. [385]

Q. Who told you that? A. Mr. Watts.

Q. Did you say anything about Rover's buttons?

A. I was to come to the clerk and get a Rover's button, yes.

Q. And you would get that from the clerk?

A. Yes, sir.

Q. Is Watts still the foreman?

A. He is assistant superintendent, and W. Plimpton is the general foreman.

Q. When did Watts tell you you could get a button from the clerk?

A. Shortly after I was appointed committeeman.

Q. What did he say?

A. He stated I could get a button from the clerk at any time for union business, and I shouldn't abuse the privilege, and it would be all right with him.

(Testimony of Hervey H. Thomas.)

Mr. Harrington: I have no further questions.

Cross Examination

Q. (By Mr. Riggs) When did Department 96 move up into the parts plant, Mr. Thomas?

A. Well, it's better than a year ago. That was 65 at that time.

Q. Was that about July of 1941 when the parts plant was finished? [386] A. Yes, sir.

Q. You remember a bulletin that was put out some time in July about men roving around the plant?

A. Well, I couldn't say, because I was left down at the home plant to finish up a job I was on when they first went up there, and it was about a month or two after that.

Q. There is an exhibit here that says something about men roving around the plant, and there was an explanation given by some witness, I have forgotten who, who suggested the men were getting out of parts plant No. 2, down to the home plant, and wandering around. There is an overpass between the parts plant and the home plant, which was not finished at that time, and was not finished until some time in April of 1942, wasn't it?

A. That is right.

Q. If anybody wanted to go from the parts plant, which is a half or three-quarters of a mile down to the home plant, they would either have to take a bus or automobile. I believe even the street cars weren't running there at that time. Is that right?

A. That is right.

(Testimony of Hervey H. Thomas.)

Q. So that anybody going to rove from the parts plant down to Plant No. 1 would have to ride in an automobile?

A. I wouldn't know about that. I don't represent men in the home plant, so I wouldn't know about that. [387]

Q. I am not asking you about yourself personally. I just want to know about the conditions of the plant, being as far apart as they were.

A. The only way I ever went was to go to the foreman, who sent me there, and gave me a pass to go on the bus. That's how I did it.

Q. Nobody ever accused you of leaving your post unnecessarily for union business, have they?

A. No, sir.

Q. You have the confidence of Mr. Watts and Mr. Plimpton, haven't you?

A. Yes, sir.

Q. So far as you are concerned, you haven't abused the privilege, have you?

A. No, sir, the foreman complimented me on that in the last couple of months.

Q. I believe you said your jig and fixtures department is all over the parts plant?

A. It is more or less scattered all through the three buildings.

Q. All the three buildings?

A. Yes, sir.

Q. And when did Mr. Watts tell you you can leave the department at any time you wanted, getting a button from the clerk, providing you didn't abuse the privilege? [388]

A. I was first made committeeman, and I had a

(Testimony of Hervey H. Thomas.)

talk with him, and that has been nearly a year ago.

Mr. Riggs: That is all.

Mr. Harrington: I have no further questions.

Q. (By Trial Examiner Hektoen) Mr. Thomas, about how many times a week would you say that you got permission from your foreman or the assistant to go somewhere out on union business in the plant?

A. I would say it averaged around twice a week anyway since I have been committeeman, that I have went to the other buildings.

Q. You don't count when you leave your work or whatever you are doing and go some place in the same building?

A. I usually just tell the lead man I am going down, but it very seldom is ever necessary, because the men usually come to me where I am working.

Q. If you included those times that you went somewhere in your own building, about how many times a week would it be you went on union business?

A. It would be less than once a week. I can't remember of anything on union business—I can't recall any certain time I left our department; a half a dozen times in the last year.

Q. So it is usually about twice a week that you do leave on union business? [389]

A. That is right. I would say it averaged that. I have shop stewards, and lots of times something comes up and they call me on the phone. They usually call be on Mr. Watts' phone, and the clerk or the

(Testimony of Hervey H. Thomas.)

assistant clerk come and notify me I am wanted on the phone.

Q. No complaint has been made about your answering telephone calls? A. None whatever.

Q. (By Mr. Harrington) Mr. Thomas, how long did you say you had been a committeeman?

A. Well, I would say nearly a year. It might be 11 months. I don't recall.

Q. Before January 1 of this year when you had grievances who did you take them up with? Who was your next union man higher up that you took them up with?

A. Before that time the shop chairman of the committeemen was Mr. Fisher.

Q. And you took up your grievances up to him?

A. After I had thrashed it over with the foremen and we couldn't go no further, we went to Mr. Fisher.

Q. Who did the other committeemen take up their grievances with? A. With Mr. Fisher.

Q. In other words, all complaints were taken up with Mr. Fisher? [390]

A. After taking it up first with the foreman, before anybody was supposed to go into the personnel, or Mr. Larimore, or Mr. Newman, they were supposed to take it up with Mr. Fisher.

Q. How many other committeemen were there besides yourself?

A. There must have been 35.

Q. And all 35 men took their grievances up through Fisher?

(Testimony of Hervey H. Thomas.)

A. They were supposed to act through the shop chairman.

Mr. Harrington: I have no further questions.

Mr. Riggs: Nothing.

Trial Examiner Kektoen: Thank you.

(Witness excused.)

No. 10389

United States
Circuit Court of Appeals

For the Ninth Circuit. 2

CONSOLIDATED AIRCRAFT CORPORA-
TION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

In Two Volumes

VOLUME II

Pages 497 to 946

Upon Petition for Review and Enforcement of an Order
of the National Labor Relations Board

FILED

JUL 29 1943

PAUL B. O'BRIEN,
CLERK

No. 10389

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Upon Petition for Review and Enforcement of an Order
of the National Labor Relations Board

Mr. Harrington: Mr. H. C. Brown.

HARVEY C. BROWN

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Harrington) Will you give your name and address to the reporter?

A. Harvey C. Brown, 1133 4th Street, San Diego.

Q. Are you a member of the union?

A. That is right.

Q. And do you hold any position in the union?

A. I do. [391]

Q. What is that position?

A. Handling publicity.

Q. Do you have any title?

A. Editor, public relations director, whatever they want to call me.

Q. How long have you held that position?

A. Approximately two years.

Q. Do you have anything to do with the union membership in the Consolidated plant?

A. Well, being in a rather peculiar position, there are times when I have been called upon to give information to the membership, when the business agents or someone else in authority is not there.

Q. Were you called on in December of 1941 to do so?

A. In reference to Sunday work I was.

Q. When was that?

A. That happened immediately prior to the Sunday following the attack on Pearl Harbor.

(Testimony of Harvey C. Brown.)

Q. Can you explain what happened?

A. The representative at that time was W. J. Chudleigh, who was president of our organization, and R. B. Felton, who was the business representative. Both of them happened to be absent at the time, and L. A. Perry, who was then financial secretary, had received some communications through the telephone that foremen and lead men were attempt- [392] ing to get certain of the employees at Consolidated to sign a slip of paper that they would work on Sunday, waiving double time.

Q. What was your participation in this?

A. I was told about this, coming into the office, and upon learning Mr. Chudleigh was not there, and that Brother Felton was not there, I called up the plant, contacted a committeeman, asking what the story was, and after an investigation by him, learned the thing was actually going on.

Immediately following that I called Mr. Waterbury who was and still is, I believe, personnel director, and Mr. Waterbury was rather surprised and said he would immediately contact Mr. Laddon, or Major Fleet, if possible, and would advise me as soon as he could.

Approximately an hour later I received a call from Major Fleet himself. The Major wanted to talk to Mr. Chudleigh and when I told him Mr. Chudleigh was out of town, he asked me what we were prepared to do in relation to working on Sunday.

(Testimony of Harvey C. Brown.)

I told him we were prepared to work. He said: "You are prepared to work for time and a half?"

I said, "No, I hadn't heard anything about that."

He said, "Well, we certainly know that the President of the United States had requested that the plants operate 24 hours a day and 7 days a week, and that meant they would [393] have to be manned, and the men should do likewise, work 7 days a week and 24 hours a day. And that the company was not in a position to pay double time on Sunday because they couldn't receive payment in return from the Navy, on the contracts they were working." [394]

Q. What contracts were they?

A. I can't state specifically what.

Q. Well, I mean——

A. For the manufacture of the planes—the contracts that they were working on for the manufacture of planes.

I attempted to point out to the Major that we were in no position as individuals, or as a group, unless elected by the membership to arbitrarily do away with any of the provisions of our agreement.

The agreement definitely called for double time until such time as we were able to sit down in representation from both the company and the union, we would have to expect double time pay.

He reiterated that the company couldn't pay it. Made several statements about a seeming lack of loyalty on the part of the union in not having foreseen the circumstances and making provisions to do away with double time. And in closing he stated that

(Testimony of Harvey C. Brown.)

the company was not in a position to pay double time and that if the union felt that they were not willing to work for less than double time, or time and a half, he would be forced to close down the company and not operate, and that is what he would do on Sunday.

In other words, he assured me that the company would not operate the plant on the next day.

Trial Examiner Hektoen: Will you read the answer? [395]

(Answer read)

The Witness: I pointed out just prior to his final statement, and I believe the thing that caused him to make it, that I had in my possession a memorandum from the Navy Department to all contractors and sub-contractors of war industries, that in the event there should be increased costs on contracts, if the contractor or sub-contractor would make the proper application and submit evidence that their case would be considered and that there could be a reimbursement for the excess costs.

Q. (By Mr. Harrington) Did you have any conversation with any other person representing—

Mr. Riggs: I move to strike that statement out unless such communication is produced.

Trial Examiner Hektoen: Did you tell Major Fleet that?

The Witness: Yes, that is right.

Trial Examiner Hektoen: It may stand.

Q. (By Mr. Harrington) Did you have a conversation with any other official of the company that day?

(Testimony of Harvey C. Brown.)

A. Very shortly after ending the conversation with Major Fleet I was called on the phone by an Army or Navy representative in the plant, who seemed to have, from his conversation, a great deal of authority.

Trial Examiner Hekton: I think we ought to have his name, Mr. Harrington. [396]

Q. (By Mr. Harrington) Do you know who that person was?

A. I would know the person if I could make an investigation and find out who the representative was. I can't tell you the name.

Mr. Riggs: I don't like to make technical objections in a hearing like this, but it seems to me that the witness should be admonished not to draw conclusions but simply state the facts.

Trial Examiner Hekton: We are trying to find out—I am trying to find out the name of this man.

Mr. Riggs: He said he seemed to have a good deal of authority. I don't know how he can tell that by talking over the telephone.

Trial Examiner Hekton: That is exactly my point. I agree with you.

Q. (By Mr. Harrington) If you can't identify the person I shall not pursue that further.

Did you have any talk with anybody else representing the company whom you can identify?

A. That is right?

Q. After that conversation was ended did you talk with somebody else? A. Yes, sir.

(Testimony of Harvey C. Brown.)

Mr. Laddon called me on the phone——

Trial Examiner Hektoen: Is this still on Saturday, the [397] 13th?

The Witness: That is correct, the Saturday preceding.

Mr. Laddon called me on the phone and was considerably rude and upset.

Q. (By Mr. Harrington) Well, one thing, can you tell what he said?

A. In his conversation he stated that he thought we were unpatriotic; that I was being very unAmerican in my attitude.

I attempted to explain that I was just hired by the union to do a job which certainly didn't include representing them in a matter like that.

I attempted to point out to him, as I had to Major Fleet, that we would have to negotiate any change in the contract and that at the present time the contract called for double time.

He stated that inasmuch as the President requested the plant to operate seven days a week, 24 hours a day, they intended to operate the next day. I pointed out to him that the company would be subject to charges if they did that; that we would not attempt to keep our men off the job but from information I had received from the plant already the company was guilty, through their foremen and other supervisory representatives, of breaking the labor law and that that would just add to it. [398]

Q. (By Mr. Harrington) Was there any further conversation at that time?

(Testimony of Harvey C. Brown.)

A. (No response.)

Q. What do you mean when you say "charges"?

A. We were going to prefer charges against the company for breaking the terms of our agreement.

Q. And who were the charges filed under? What do you mean by that?

A. The thing is we were in a position there, without having our——

Mr. Riggs: I object to that as immaterial and also cumulative.

Q. (By Mr. Harrington) Who were you going to file the charges with?

Mr. Riggs: I object to that. I think that is immaterial.

Trial Examiner Hektoen: Did you tell Laddon this?

The Witness: I told Laddon that there would have to be charges filed with the National Labor Relations Board.

Trial Examiner Hektoen: Is that what you said?

The Witness: That is right.

Trial Examiner Hektoen: All right, that answers everything.

Q. (By Mr. Harrington) And were charges filed?

A. Charges were—if you want me to go ahead beyond this [399] point, before I make another point?

Trial Examiner Hektoen: Simply answer that question.

Q. (By Mr. Harrington) Are you through with this conversation?

(Testimony of Harvey C. Brown.)

A. Absolutely not.

Trial Examiner Hektoen: Do you withdraw the question?

Mr. Harrington: Yes.

The Witness: Mr. Laddon stated that he didn't care whether we preferred charges or not; that in all probability the charges wouldn't stand up because of the President's desire that we operate seven days a week and 24 hours a day, and with that closed the conversation.

Immediately after that I got a hold of Brother Perry, who was the only full time man there——

Trial Examiner Hektoen: Now wait a minute, you had better take charge of this examination, Mr. Harrington.

Mr. Harrington: I have no further questions. I think it would be repetitious from now on.

Trial Examiner Hektoen: You may cross examine.

Cross Examination

Q. (By Mr. Riggs) Did the plant operate the next day? A. It did.

Q. And do you know how many men worked the next day? A. I wouldn't know that, no.

Q. All those that worked received double time, did they [400] not? A. I couldn't answer that.

Q. Were you here yesterday when Mr. Perry testified they did? A. No, I was not.

Q. Do you claim that they didn't receive double time? A. I make no claim.

Q. You don't know anything about it?

(Testimony of Harvey C. Brown.)

A. Not as to whether all of the men that worked on Sunday received double time.

Q. But the President's request or the country being in a state of war made no suggestion in your mind of any deviation from your agreement?

Mr. Harrington: I object to that.

Trial Examiner Hektoen: I will sustain that objection.

Mr. Riggs: Nothing more.

Trial Examiner Hektoen: That is all, thank you.

(Witness excused.)

Trial Examiner Hektoen: We will have a short recess.

(A short recess was had.)

Trial Examiner Hektoen: We will be in order, please.

Mr. Harrington: Mr. Roy Brown. [401]

ROY M. BROWN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Mr. Harrington: May we stipulate on the record, Mr. Riggs, that the union is a labor organization within the meaning of the Act?

Mr. Riggs: Of course.

Mr. Harrington: Thank you.

Trial Examiner Hektoen: It is already admitted in the answer, I believe.

(Testimony of Roy M. Brown.)

Direct Examination

Q. (By Mr. Harrington) Will you give your name and address to the reporter?

A. Roy M. Brown. Local address?

Q. Yes. A. St. James Hotel.

Q. Are you a member of the union?

A. Yes.

Q. Do you hold any official position in the union?

A. Grand lodge representative of the International Association of Machinists.

Q. And how long have you held that position?

A. Since November, 1939.

Q. What duties do you perform as international representa- [402] tive?

A. I handle all business pertaining to the affairs of any of our local lodges or the grand lodge that might be assigned to me by our international president or vice president.

Q. Did you participate in conferences on individual increases? A. Yes.

Q. Did you take any further—have any further participation besides these conferences?

A. In relation to individual increases?

Q. Yes.

Mr. Riggs: May I interrupt a minute? What do you mean, the conferences that were held with reference to the bulletin that was put out stating that there would be no individual increases?

Mr. Harrington: No. We have had testimony

(Testimony of Roy M. Brown.)

here that there were conferences held between company and union representatives with respect to that matter—with respect to the matter of individual increases and I didn't intend to go into those conferences again because it would be repetitious. I merely want to know if Mr. Brown had any participation in any way beyond any conferences.

Q. (By Mr. Harrington) Have you done anything with respect to those increases beyond conferring with the company? [403]

A. Yes. I discussed matters of the policy of the company in granting individual increases without consulting the union, with all the representatives of the Labor Relations Committee.

Q. Well, I think we have gone into those conferences. A. In relation to——

Q. Did you have any correspondence with them?

A. Yes. I wrote a letter to Mr. Persons some time early in May in relation to job classifications.

Q. I am talking about merit increases — individual increases. A. (No response.)

Q. To refresh your recollection did you have occasion to write to Mr. Wiseman with reference to this matter?

A. I probably did. I probably did over a period of time. I had to write several letters, numerous letters in relation to various subjects and it was my responsibility at that time to handle most of these subjects.

(Testimony of Roy M. Brown.)

Mr. Harrington: Will you mark this for identification?

(The document referred to was marked as Board's Exhibit No. 20 for identification.)

Q. (By Mr. Harrington) I will show you Board's Exhibit 20 for identification and ask you if you can identify that letter?

(Handing document to the witness.)

A. Yes, sir; this letter was written in relation to a [404] specific individual merit increase—an increase that they started to grant.

Trial Examiner Hektoen: That is a letter purporting to be from you to whom, Mr. Harrington?

Mr. Harrington: Mr. Wiseman, dated April 2, 1942.

Trial Examiner Hektoen: All right.

The Witness: This letter was written in regards to the increases that the company proposed and had notified certain inspectors that they were going to receive prior to the time that they had discussed these increases with the union in any way whatsoever.

Mr. Riggs: May I ask a question or two?

Mr. Harrington: Surely.

Mr. Riggs: This was with reference to the increases of some 285 men that had been granted in the inspection department?

The Witness: There were 252 in the Home Plant and 100 or so in the Parts Plant. Yes, that is true.

(Testimony of Roy M. Brown.)

Mr. Riggs: Were they all in the inspection department?

The Witness: I wouldn't say that every one was in the inspection department, but to the best of my knowledge they were.

Mr. Riggs: And this was after some conferences between yourself and Mr. Wisemenan or somebody else connected with the company, as to what should be done with reference to [405] those increases?

The Witness: That matter had been discussed with the labor relations committee.

Mr. Riggs: And I think somebody here on behalf of the union said that the company offered to retract them and that the union said that they didn't care to have them retracted—they didn't want that. Is that correct?

The Witness: Mr. Fleet. Dave Fleet stated that the company was wrong in their granting of increases and that they would stop the granting of such increases if it met with the approval of the union.

We took the position that we didn't care whether they put the increases through or stopped the increases, the damage had already been done—the violation had already occurred.

Trial Examiner Hektoen: We have had testimony on this matter before.

Mr. Harrington: Yes. I offer Board's Exhibit for identification 20 in evidence as Board's Exhibit 20.

(Testimony of Roy M. Brown.)

Trial Examiner Hektoen: Mr. Riggs?

Mr. Riggs: No objection.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked for identification as Board's Exhibit 20 was received in evidence.)

BOARD'S EXHIBIT No. 20

April 2nd, 1942.

By Bonded Messenger

Mr. Herman R. Wiseman,

Labor Relations Director,

Consolidated Aircraft Corporation,

Lindberg Field,

San Diego, California.

Dear Sir:

Not wishing that any misunderstanding might exist in regards to the increases in pay that the company had decided to give to certain individual employees in various departments, presumably based upon individual merit; we wish to definitely state that if the company desires to put these increases into effect as they now stand, not having been discussed with the various committeemen of the departments involved as is provided for in our agreement, such decision and the responsibility connected therewith rests with the company.

The Union has not demanded that the Company not make these increases effective as of the date

(Testimony of Roy M. Brown.)

they had originally set; but we have merely pointed out to your Labor Relations Committee the fact that in our opinion the granting of such increases is a definite violation of our Agreement, as well as a violation of the National Labor Relations Act, constituting an Unfair Labor Practice within the meaning of the Act.

Therefore, may we again suggest that the Company use their own good judgment as to whether they make these wage increases effective or not, without the consent of the Union Committeeman, as originally intended by the Company.

With kindest and best personal regards, I remain,

Respectfully yours,

RMB/rb.

ROY M. BROWN,

Grand Lodge Representative,
I.A.ofM.

Q. By Mr. Harrington) Did you participate in conferences [406] between the company and the union with respect to changing from a two shift basis to a three shift basis? A. Yes.

Q. When were those conferences held?

A. In the latter part of February.

Q. And who was present?

A. Mr. Wiseman, Mr. Fleet, Mr. Bowers and on one occasion I believe Bud Waterbury was there.

Mr. Riggs: Mr. Harrington, is the change from a two shift operation to a three shift operation charged as a violation of the Act?

(Testimony of Roy M. Brown.)

Mr. Harrington: 8(5), yes. I believe it is paragraph 9 of the complaint. It is the 8(5) allegation.

Q. (By Mr. Harrington) What occurred——

Trial Examiner Hektoen: Who was there on behalf of the union?

The Witness: Myself, Mr. Phillips, Mr. Bruce, Mr. Perry and Mr. Wilkerson.

Q. (By Mr. Harrington) And what occurred?

A. We discussed the change-over from a two-shift operation to a three-shift operation.

I might say that the possibility of the company going on or off the two-shift operation to the three-shift setup had been discussed numerous times prior to the final meetings in relation to this matter. But the primary discussions, when [407] it was finally determined by the company that they would go on the three-shift work day, was dealing with the 8 cent differential and the six and a half hour work day.

Q. (By Mr. Harrington) What is the differential?

A. Your two night shifts, the employees on the two night shifts receive in excess of their daily base pay a differential of 8 cents per hour for night work.

The evening shift, or what we call the swing shift receives 8 cents per hour in addition to their regular base pay and work 8 hours.

It was understood and agreed during these meetings that the third shift would work six and a

(Testimony of Roy M. Brown.)

half hours, for which they would be paid eight hours pay plus 8 cents for eight hours, and at no time was there any indication through discussion by the company's representatives, that they were going to in any way change the method of working as set forth in the contract between the company and the union.

Q. What do you mean by that?

A. In other words, that they would abide by the provisions of the contract in relation to the work week.

Q. And then—has the company established a three-shift operation? A. They have.

Q. And what is the union's position with respect to that?

A. Just prior to the time they went on the three-shift [408] operation it is my understanding that a notice was posted stating how the third shift would work and what days.

In that notice was incorporated the sixth shift would work from 12:00 midnight Saturday to 7:00 A. M. Sunday morning and it would be paid for at the rate of time and a half instead of double time, which we contend is provided for in the contract, in that Sunday work, Sunday being the seventh consecutive day should be paid for at double time.

Q. Were any conferences held with the company about that after the third shift was put into operation?

A. Yes, it was discussed with the labor rela-

(Testimony of Roy M. Brown.)

tions committee, various members of the labor relations committee, and their position was that they interpreted the contract to read that way, and they were going to institute that method of operations period; that in so far as they were concerned that they would pay for that shift at the rate of time and a half.

Q. When was such conference held?

A. Between the time this notice was posted and the actual time of the institution of the shift, and meetings were held after the shift was actually worked.

Q. And who were present?

A. The labor relations committee of the company, the various business agents of the union that have been named here before, and the conciliator, Harry Malcolm was present at [409] the last meeting where this was discussed.

Q. Who stated that the company was going to put them into effect? Period? I believe that is your language.

A. I wrote a letter to Mr. Wiseman over the signature of our business agent, Mr. Bruce, setting forth the contention of the union and making a demand that this shift be paid for as provided for in the contract, at the rate of double time, in that our contract reads that the five-day work week shall consist of the work week—shall consist of five consecutive days, Monday through Friday; the sixth shift shall be paid for at time and a

(Testimony of Roy M. Brown.)

half and the seventh shift or seventh day at double time.

Mr. Harrington: Will you mark this, please.

(The document referred to was marked as Board's Exhibit No. 21 for identification.)

Q. (By Mr. Harrington) I show you a paper I have had marked as Board's Exhibit 21 for identification, and ask you if you have seen that letter before, Mr. Brown?

(Handing document to the witness.)

A. Yes. That is the letter that I dictated.

Q. It is a letter signed by James E. Bruce, coordinating business agent of the union, to Herman J. Wiseman, dated March 12, 1942. In the lower right hand corner there are the initials J. R. B.-R.B. What does that mean, Mr. Brown?

Mr. Riggs: Will you give me the date of that letter [410] again?

Mr. Harrington: March 12, 1942.

The Witness: This letter was signed by James E. Bruce and it was written by myself. This is my identification (indicating).

Q. (By Mr. Harrington) Pointing at the initials R.B.? A. Roy Brown.

Mr. Harrington: I offer Board's Exhibit 21 for identification in evidence as Board's Exhibit 21.

Trial Examiner Hektoen: Any objection, Mr. Riggs?

Mr. Riggs: No objection.

(Testimony of Roy M. Brown.)

Trial Examiner Hektoen: It may be received without objection.

(The document heretofore marked for identification as Board's Exhibit No. 21 was received in evidence.)

BOARD'S EXHIBIT No. 21

March 12th, 1942.

Mr. Herman J. Wiseman, Personnel Director,
Consolidated Aircraft Corporation,
Lindberg Field,
San Diego, California.

Dear Sir:

Pursuant to our recent conversations held in Conference Room number two of the Parts Plant covering the rearrangement of shifts in the plants of the Consolidated Aircraft Corporation; namely, a change from a two shift operation to a three shift operation; we wish to make ourselves clear on any work day extending into Sunday.

If the company operates any shift between the hours of 12 m. midnight (Saturday) to 12 m. midnight (Sunday), such work will have to be paid for at the double the straight time rate as prescribed for in Articles 4 and 5 of the Labor Relations Agreement now in full force and effect between the Consolidated Aircraft Corporation and our Association.

Therefore, we are herewith serving notice of

(Testimony of Roy M. Brown.)

our insistence that the above mentioned provisions of our Agreement; as well as all other provisions therein contained are lived up to to the letter.

Trusting that we may enjoy your full cooperation in this matter; and with kindest and best personal regards, I remain,

Respectfully yours,

[Seal] JAMES E. BRUCE

James E. Bruce,

Coordinator, Business Agents,

JEB/rb.

I.A.ofM. Lodge No. 1125.

CC:D. O. Walsh, NLRB.

[Stamped]: Received Mar 13 1942 National Labor Relations Board Twenty-First Region Los Angeles.

Q. (By Mr. Harrington) Was any answer received from Wiseman?

A. Yes. Herman answered the letter, I believe, within two days after this letter was written.

Q. And what did he say in his answer?

A. In substance he stated, if my recollection is correct, that the company did not agree with the interpretation of the union and that they proposed to work the shift as per their interpretation, which was for time and a half.

Mr. Harrington: Will you mark this paper as Board's [411] Exhibit 22?

(Testimony of Roy M. Brown.)

(The document referred to was marked as Board's Exhibit No. 22 for identification.)

Q. (By Mr. Harrington) I show you a paper I have had marked as Board's Exhibit 22 and ask you if you can identify it (handing exhibit to the witness)?

A. This is a copy of the letter addressed to Mr. Bruce by Mr. Wiseman as labor relations director, under date of March 14th, setting forth their contentions in relation to that shift. [412]

Mr. Harrington: I offer Board's Exhibit 22 for identification in evidence as Board's Exhibit 22.

Trial Examiner Hektoen: Do you want a chance to compare this?

Mr. Harrington: I believe he has furnished me that.

Trial Examiner Hektoen: Is it all right?

Mr. Riggs: I think it must be.

Trial Examiner Hektoen: We will take it for granted it is an accurate transcript. Admitted without objection.

(The document heretofore marked for identification as Board's Exhibit No. 22 was received in evidence.)

(Testimony of Roy M. Brown.)

BOARD'S EXHIBIT No. 22

(Copy)

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.

March 14, 1942

Mr. J. E. Bruce
Business Representative
Aeronautical Mechanics Lodge #1125
1054 Third Street
San Diego, California

Dear Mr. Bruce:

We have your letter of March 12, 1942, advising that the Union interprets Articles 4 and 5 of the Agreement as providing for double time pay for any hours worked "between the hours of 12 m. midnight (Saturday) to 12m. midnight (Sunday)". We are unable to read this interpretation into the Agreement; hence we are planning to pay the third shift employees the same weekly pay envelope for 39 hours work that they would receive for 48 hours work on the second shift.

We believe that the above policy meets the spirit and intent of the Agreement, and that all employees will consider this policy fair.

Very truly yours,

CONSOLIDATED AIRCRAFT
CORPORATION

H. R. WISEMAN

HRW:LF

Labor Relations Director

(Testimony of Roy M. Brown.)

Copy to:

Wm. R. Walsh, Director

Twenty-First Region

National Labor Relations Board

Los Angeles, Calif.

Q. (By Mr. Harrington) Was there any further conference held on that matter after receiving that letter?

A. No official conference.

Q. What do you mean by that?

A. Well, in other words, after this letter was received, we made preparations to file charges with the National Labor Relations Board against the company in relation to their arbitrary action of instituting a procedure or a work day which actually is a day contrary with the provisions of the contract, without ever talking it over with the union prior to the time they took that action.

From time to time in other conferences we would notify the company that action was contrary to law and contrary to [413] the contract existing between the two organizations.

Q. What would the company's response be?

A. We differ in opinion.

Q. Have you participated in this matter of job classifications and rates of pay? A. Yes.

Q. You participated in conferences on that, did you? A. Yes.

(Testimony of Roy M. Brown.)

Q. Did you take any further steps in the matter other than conferences with the company?

A. Yes.

Q. What steps did you take?

A. I addressed a communication to Mr. Frank Persons requesting that they appoint a committee to sit down with a like committee of the union for the purpose of working out mutually satisfactory job classifications and rates of pay that had been arrived at as a result of collective bargaining, and not by arbitrary action on the part of the company.

Mr. Harrington: Will you mark this as Board's next exhibit?

(The document referred to was marked as Board's Exhibit No. 23 for identification.)

Q. (By Mr. Harrington) I show you a paper I have had marked Board's Exhibit 23 for identification and ask you what that is. [414]

A. That's the letter I addressed to Mr. Persons under date of May 1, making the request so stated.

Q. Signed by you?

A. Signed by myself.

Mr. Harrington: I offer Board's Exhibit 23 for identification in evidence as Board's Exhibit 23.

Trial Examiner Hektoen: That may be admitted, I take it, Mr. Riggs, without objection, and the letter referred to therein, of March 25, 1942, is in evidence as Board's Exhibit 12.

(Testimony of Roy M. Brown.)

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 23 was received in evidence.)

BOARD'S EXHIBIT No. 23

May 1, 1942

Mr. W. Frank Persons
Industrial Relations Director
Consolidated Aircraft Corporation
San Diego, California

Dear Mr. Persons:

I am enclosing herewith a copy of a letter addressed to Mr. Herman R. Wiseman, Labor Relations Director, under the date of March 25th, 1942. To the best of my knowledge I never received an answer from Mr. Wiseman in answer to the request set forth in this letter.

The subject matter is self-explanatory and pertains to the topics you and I recently discussed in your office. As agreed to at that time, I am requesting for and in behalf of Local Lodge #1125 that the Consolidated Aircraft Corporation appoint a committee to meet with a like committee from our organization for the purpose of arriving at a mutually satisfactory agreement and understanding relating to job classifications and rates of pay.

I am not at this time requesting that our agreement be reopened as provided for in Article #25 of the existing agreement between our respective

(Testimony of Roy M. Brown.)

organizations. I am sincerely hoping that such an arrangement or understanding can be mutually agreed to in the interests of our present harmonious relationships as this matter constitutes one of the charges now pending against the Consolidated Aircraft Corporation with the National Labor Relations Board. I would very much appreciate a statement of the Company's position in this matter.

With kindest and best personal regards, I remain,

Respectfully yours,

ROY M. BROWN,

Grand Lodge Representative,
I. A. of M.

RMB:mg

Enc.

Q. (By Mr. Harrington): Have you received any reply to that letter?

A. No, I never received a reply to this particular communication.

Q. Has the union received any reply?

A. They have not.

Mr. Harrington: I have no further questions.

Cross Examination

By Mr. Riggs:

Q. Have you been continuously in San Diego since November of 1939?

A. I haven't been continuously in San Diego

(Testimony of Roy M. Brown.)

since November, 1939. I came to San Diego December 1, 1941.

Q. Since December 1, 1941 you have been here continuously [415] except when a trip takes you out of town, haven't you?

A. That is correct.

Q. During that time you have been familiar with the relations between the company and the union?

A. In the main, yes.

Q. Was there anybody more familiar with them than you are?

A. No, I would say that I am as familiar with the relationship as any one individual.

Q. You knew all of our people connected with the company personally, didn't you, who had charge of labor matters?

A. The people I dealt with, yes, in charge of labor relations.

Q. I mean David D. Fleet?

A. That's right.

Q. And Herman Wiseman?

A. That's right.

Q. Mr. Waterbury? A. That's right.

Q. Since Mr. Persons has been there you knew him? A. That's right.

Q. And Mr. Bowers?

A. That's right.

Q. And your relations have been friendly and harmonious, have they not?

A. We keep relations that way even though

(Testimony of Roy M. Brown.)

there is a [416] difference of opinion at various times.

Q. You found you can differ with respect to your opinions and still keep on friendly terms?

A. We can differ without becoming disagreeable.

Q. I want to get down to the point as to how many of these matters that are matters of complaint, Mr. Brown, that had been cleared up due to relations between yourself and the company. First, I would like to take up this letter of yours, April 2, with reference to interim increases in pay. There was some conferences about that between you and some people from the union, and Mr. Fleet and Mr. Bowers or Mr. Wiseman, were there not?

A. That is correct.

Q. And did Mr. Fleet explain to you that practically all these increases had taken place in one department, or the inspection department?

A. The particular increases that were the subject matter of discussions at that particular moment were confined to the inspection departments.

Q. And did Mr. Fleet say that the company had been wrong in not having the foremen of the inspection department not consult the committeemen?

A. Mr. Fleet stated the company was wrong in granting these increases.

Q. Did he say anything as to whether the foreman in the [417] inspection department had been fully acquainted with the procedure laid down or not?

(Testimony of Roy M. Brown.)

A. Yes. The foremen in the inspection departments as well as other departments had been acquainted with the procedure that was to be followed.

Q. Didn't he say with reference to the inspection department, or the foremen, they had made a slip-up somewhere with reference to those particular interim increases?

A. No, not to the best of my knowledge.

Q. Did he offer to have the increases renegotiated or rescinded?

A. He offered to stop the effective date of these increases and to have them negotiated as per our agreement between the union committeemen and the foremen or the supervisors in charge of those people.

Q. What was your reply to that, as contained in this Exhibit 20, in substance, saying you didn't want to go into that?

A. We stated to the Labor Relations Committee that what they did in relation to putting the increases into effect or not putting them into effect was inconsequential to the union. That the violation had already occurred and they could do as they pleased.

Mind you, at that time we hadn't arrived at the understanding that we now have in relation to the orderly procedure [418] setting forth how these particular matters will be handled in the future.

Q. You are referring to the bulletin that was put out later by Mr. Leigh which contained, had

(Testimony of Roy M. Brown.)

attached thereto, the slip I think it is in exhibit here, to be signed by the foremen and committeemen?

A. It was a memorandum put out, I believe, around the 9th of April.

Q. What I want to get at, Mr. Brown, is, so far as the union is concerned, although you weren't satisfied with what had been done with reference to these men in the inspection department, that thereafter any grievance you had with reference to the method of interim increases was cured by the company's action after consultation with the union?

A. We arrived at a satisfactory solution to handle all of those particular cases and also the cases in the future, but only after the damage had been done by the action of the company in that particular case.

Q. Did you consider that the company did the best it could to repair the damage?

A. Well, let's say that the company sat down and bargained with the union at a date after this offense had been committed, and we had arrived at a satisfactory conclusion.

Q. When you had these conferences with the change from the two shift to the three shift, I want to go into that a [419] little more in detail. Two shifts had been operating approximately 10 hours a day. Is that correct?

A. In some department, in the majority of departments.

(Testimony of Roy M. Brown.)

Q. And who were the conferees on behalf of the company?

A. That varied, but the conferees, one or more, were the same all the time. That was, Mr. Fleet, Mr. Wiseman, Mr. Bowers, and from time to time on very rare occasions, Waterbury would come into a meeting.

Q. You stated this matter of changing from two to three shifts had been something that was discussed on or off for some time before it happened. Can you give me the length of time?

A. Well, that was discussed, Mr. Riggs, I would say from the latter part of January up until the time it was put into effect.

Trial Examiner Hektoen: When was it put into effect?

The Witness: Some time early in March, if I am not mistaken.

Q. (By Mr. Riggs): At these conferences that took place, did the company state its position as to the reasons for the change from two to three shifts?

A. The company never did tell us why they capitulated and went on the three-shift basis. They maintained right up until the time it was decided by the executive heads of the company, that they would leave two-shift operation for the [420] three, that they didn't propose to change their method of operation, that they proposed to operate on two shifts. It came very suddenly.

Q. Who do you mean that they capitulated to?

(Testimony of Roy M. Brown.)

Did you want the operation on three shifts?

A. We proposed the operation on three shifts.

Q. A change from two-shift to three-shift operation was satisfactory to the union?

A. Yes. Yes. We felt that production would be enhanced by three-shift operation instead of working the men such long hours.

Q. And the women also. Isn't that so?

A. The women at that time were not so much of a factor.

Q. There were not as many, proportionately, employed then as there are now? A. No.

Q. The women, as I recall it, on a 10-hour shift had been compelled by law to stop at the end of eight hours, had they not?

A. That wasn't a matter of discussion in relation to three-shift operation.

Q. But in any event, the change from two-shift to three-shift operation was satisfactory to the union?

A. The change in itself was satisfactory to the union, but not certain features. [421]

Q. Wait a minute. And requested by the union?

A. Yes. Yes.

Q. But your only grievance, then, with reference to the change from the two to the three shift is in relation to what they call the graveyard shift working on Sunday?

A. That is the shift from 12:00 midnight Saturday to 7:00 a. m. Sunday morning.

(Testimony of Roy M. Brown.)

Q. Aren't you mistaken in that? Didn't they go to work 11:00 o'clock Saturday night?

A. No, no. They went to work at 12:00 midnight. That will be borne out by the discussions that were held in the presence of Mr. Malcolm at the Grant Hotel, when your full committee was present.

Q. The men and women on the second shift got 8 cents an hour differential over those on the first shift, did they not?

A. Yes, they received an 8 cent bonus, or differential in pay.

Q. And the men on the graveyard shift, whether it worked from 11:00 or from 12:00 at night, they received an additional 8 cents for the second shift?

A. The men on the graveyard shift received 8 cents above their base pay, which would be their day rate. They don't receive 8 cents in addition to the second shift which would make 16 cents. They only receive 8 cents. [422]

Q. They only get the same 8 cent differential that the second shift gets?

A. That's right.

Q. But did not the men on the graveyard shift work only 6½ hours and get 8 hours overtime for the Saturday operation?

A. Will you read that question, please?

(The question was read.)

Q. (By Mr. Riggs): Let me rephrase that again. What I mean is: The men on the graveyard shift from 12:00 until 7:00, as you say, every

(Testimony of Roy M. Brown.)

morning, received not only the 8 cent differential over their base pay above the day work, but in addition to that they got paid 8 hours work for 6½ hours they perform.

A. Yes. The men and women working from 12:00 midnight to 7:00 o'clock in the morning received 8 hours pay for 6½ hours work plus 8 cents bonus for 8 hours.

Q. When it came to working from 12:00 Saturday night to 7:00 Sunday morning, as you say, and as I think it was from 11:00 to 6:30, we will clear that up later on, that also got the 8 cent bonus, they got 8 hours pay for 6½ hours work and they got time and a half for the work on Sunday?

A. Instead of double time, yes.

Q. And the union wasn't satisfied with that, but wanted them to get double pay on Sunday? [423]

A. In accordance with our agreement.

Q. Your interpretation of the contract was that was working on the 7th day and the interpretation of the company was that was working on the 6th day. Isn't that right?

A. Provisions 4 and 5 provided for our work week, that is, Provision, Article 4; Article 5 provides for overtime, double time for the seventh consecutive day, and the work week is Monday through Friday.

Q. And the company takes the position that starting on Saturday night is a six-day week and not a seven?

A. The company, since they instituted the sev-

(Testimony of Roy M. Brown.)

enth day, before even they instituted the third shift operation, moved the day ahead, took a page out of the president's book, and moved the day ahead and started at 12:00 midnight Monday as their first shift, and that way they figured they would eliminate the double time for Sunday and get by with time and a half.

Q. Has that issue ever been submitted to arbitration?

A. Not to arbitration. It was discussed in conciliation.

Q. And the company maintained its position, and you maintained the position of the union?

A. The company maintained its position in the face of testimony and advice from Harry Malcolm that they were wrong.

Mr. Riggs: I suggest that be stricken.

Mr. Harrington: I suggest it remain. He answered the [424] question.

Trial Examiner Hektoen: Read the answer.

(The answer was read.)

Trial Examiner Hektoen: It may be stricken.

Mr. Riggs: I suggest that that is not responsive.

Trial Examiner Hektoen: It may be stricken.

Q. (By Mr. Riggs): At any rate, Mr. Brown, the issue has never been settled between the union and the company, has it? To date?

A. That's why we are here.

Q. That is the only grievance you have with reference to the operation of two to three shifts?

(Testimony of Roy M. Brown.)

A. I believe that's the only grievance we have in relation to that, Mr. Riggs.

Q. Do you remember the Williamson case?

A. Quite well.

Q. After Mr. Williamson was discharged, did you have some conversations with Mr. Frank Persons with relation to his reinstatement?

A. Yes.

Q. Were they with Mr. Persons alone and yourself alone, or were there other people present?

A. Most of the discussions were between Mr. Persons and myself. There was a time when there was another person present. [425]

Q. But you have heard testimony here that there were a great number of conferences between representatives of the union and representatives of the company in which practically an impasse was reached? A. I attended those meetings.

Q. Well, after those meetings reached practically an impasse you took up some meetings with Mr. Persons, did you not?

A. That is correct.

Q. And as a result of those meetings Mr. Williamson was rehired, was he not?

A. Mr. Williamson was reinstated.

Q. Well, I think he phrased it that he was rehired.

A. Well, he was rehired. He went through the process of rehiring, but, unless I have slipped some place, his personnel record should show that he was reinstated with full job status and seniority.

(Testimony of Roy M. Brown.)

Q. Well, I show you what purports to be a letter written by you dated April 30, 1942, to the National Labor Relations Board in Los Angeles, and ask you if you wrote that letter?

(Handing paper to the witness.)

A. Yes, sir; I wrote that letter.

Mr. Riggs: I offer this in evidence.

Mr. Harrington: May we see it?

(Paper handed to Mr. Harrington.) [426]

Mr. Riggs: Will you mark this, please?

(The document referred to was marked as Respondent's Exhibit No. 5 for identification.)

Mr. Riggs: I offer it in evidence.

Trial Examiner Hektoen: Any objection?

Mr. Harrington: No objection.

Trial Examiner Hektoen: It may be admitted without objection.

(The document heretofore marked for identification as Respondent's Exhibit No. 5, was received in evidence.)

(Testimony of Roy M. Brown.)

RESPONDENT'S EXHIBIT No. 5

(Copy)

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
April 30, 1942

National Labor Relations Board
U. S. Post Office and Courthouse Bldg.
Los Angeles, California

Attention: Mr. Roger McGuire, Field
Representative

This letter will serve as your official notice that in the matter of the charges now pending against the Consolidated Aircraft Corporation, which charges were filed by myself in behalf of Aeronautical Mechanics Lodge #1125, and relating specifically to Mr. Oliver H. Williamson have been settled to the satisfaction of our organization. Therefore, we wish to withdraw the particular charges against the Consolidated Aircraft Corporation.

With kindest and best regards, and thanking you for your cooperation in this matter, I am

Very truly yours,

(Signed) ROY M. BROWN (mg)

Roy M. Brown,

Grand Lodge Representative,

I. A. of M.

RMG:mg

cc: Mr. W. Frank Persons,
Industrial Relations Director
Consolidated Aircraft Corporation

(Testimony of Roy M. Brown.)

Q. (By Mr. Riggs): In these discussions with Mr. Persons about the Williamson case, did you have anything to say about the merits of the case?

A. Yes, I did, very definitely so.

Q. Did you say anything about everybody on all sides losing their tempers? A. No, no, no.

Q. Did you say anything like that?

A. No.

Q. Did you say anything about thinking it was a tempest in a teapot?

A. No. I think that is a New England phrase.

Q. Well, what did you say about—what I want to get at, Mr. Brown, is, wasn't there a good deal of discussion between you and Mr. Persons about the whole matter, the whole thing [427] being rather trivial and should never have happened on all sides?

A. No. I know what you are trying to get at, but I can't answer your question the way you are putting it. You will have to beat around a little bit.

Q. All right. Tell me what was said.

Mr. Ryan: Mr. Examiner, I don't think it is very important. It is calling for opinion evidence and certainly the issues in this case do not revolve around a question of who thinks this is important or who doesn't think it is important. The only thing we are interested in is the facts—what was said and what was done.

Mr. Riggs: All right, I will withdraw the question and rest upon Mr. Brown's letter, Respondent's

(Testimony of Roy M. Brown.)

Exhibit 5, that the Williamson matter was settled satisfactorily to the union.

Q. (By Mr. Riggs): Have you had various talks with Mr. Persons with reference to this job classification matter?

A. From time to time, yes.

Q. And they are still continuing?

A. No, no.

Q. In the course of those conferences did Mr. Persons say anything about the job classifications having been undertaken at the request of the United States Government by Mr. Sidney Hillman? [428]

A. No, no.

Q. Didn't he tell you that the job classification was a matter that was up now for discussion in Washington? A. (No response)

Q. You know that, don't you; I mean, you have just been in Washington, haven't you?

A. That is right.

Q. Didn't you go there upon this very point of job classification by the aircraft companies in Southern California?

A. We went there on stabilization of wages.

Q. Well, that necessitates to some extent job classification, does it not? A. Naturally.

Q. Well, I mean isn't it the idea of the stabilization of wages that the aircraft companies in Southern California shall have some way akin standards of classifications so wages in one plant will not be out of line with wages in another plant and prevent migratory workers from changing jobs?

(Testimony of Roy M. Brown.)

A. That was the original proposal of the union a year ago and also this year it was proposed by the union.

Q. Proposed to whom?

A. To the Government by Dale Read, our representative at Lockheed and Vega. He took the entire breakdown of job classification and rates of pay back to Washington prior to [429] the time of the calling of the stabilization conference in Hollywood, and sold it to the Government.

Q. And was the conference in Hollywood called for the purpose of considering the wage stabilization plan among the southern aircraft—Southern California aircraft companies?

A. That is correct.

Q. And were representatives of all of the companies there? A. All but one.

Q. Was that Consolidated?

A. No; that was Fletcher.

Q. Well, were there representatives of the unions there? A. That is correct.

Q. Were there representatives of C.I.O. representing the union at Vultee?

A. Representatives of the C.I.O. came here from the East. There was only one local representative.

Q. Who represented the 1125 Lodge?

A. Mr. Wilkerson, Mr. Pyeatt and Mr. Brown.

Q. Didn't it come up at that meeting that there wasn't any one company of the aircraft companies on the Pacific Coast that could negotiate job classi-

(Testimony of Roy M. Brown.)

fications with its own particular union without disrupting the Government plan until stabilization had been effected?

A. No, it did not. I would like to point out also that [430] these requests were made a long time prior to the time stabilization was in the offing and Government was participating.

Q. Well, the conference—did the conference at Hollywood get anywhere?

A. No, I don't believe we got very far. There was too much jurisdictional disputes between the Governmental agencies.

Q. What Governmental agencies were involved?

A. Most the alphabetical agencies—OPA, WPB, War Manpower Commission, War Labor Board.

Q. Then when was the matter adjourned to Washington?

A. Adjourned to Washington to reconvene on or about the 22nd of July, with a definite date set for the 27th.

Q. What happened then?

A. We cooled our heels back there for about five weeks and fought the windmill.

Q. Fought what? A. Windmill.

Q. Who do you mean by "we"?

A. The stabilization committee of the A. F. of L. unions, or the Machinists' Union on the Pacific Coast.

Q. Who represented 1125?

A. Mr. Wilkerson, Mr. Brown and Mr. Pyeatt.

(Testimony of Roy M. Brown.)

Q. By Mr. Brown, do you mean yourself?

A. No; H. C. Brown.

Q. You were there also? [431] A. Yes.

Mr. Harrington: Mr. Examiner, I object to this. This is getting too far afield. Mr. Riggs is talking about something that happened within the last couple of weeks.

Trial Examiner Hektoen: Mr. Riggs is trying to show that under the circumstances there can't be anything done with reference to job classifications; is that correct, Mr. Riggs?

Mr. Riggs: That is correct.

Mr. Harrington: When? At the present time?

Mr. Riggs: At the present time.

Trial Examiner Hektoen: At any time, I take it is what you are trying to show and on that basis you may go ahead.

Q. (By Mr. Riggs) Was there anybody from Consolidated there? A. In Washington?

Q. Yes. A. No.

Q. Were there representatives of the other unions from the Pacific Coast present?

A. I didn't see them. Do you mean the I. of M. Unions, or C.I.O.?

Q. C.I.O. and others.

A. I didn't see any C.I.O. representatives there.

Q. Wasn't Mr. Beck there of Consolidated? [432]

A. If he was there he kept out of our vision.

Q. Well, has that conference yet been held?

A. It has not.

(Testimony of Roy M. Brown.)

Q. What was the status or what is the status at the present time?

A. I believe the President of the United States is the only one that could answer that question.

Q. It is a matter that the union have been pressing, is it not?

A. I believe we could say that the unions are very much interested for the simple reason that they have been left hanging up in the air.

Q. Well, now, is it in your opinion desirable from the standpoint of the union to have certain job classifications at Vultee, say, at one rate and the same job classifications at Consolidated, for instance, at either a higher or lower rate than those at Vultee?

A. Job stabilization or job classifications can never be stabilized entirely as a result of operations in one plant as against another because your method of operations are different. You can only arrive at a pattern.

Now, there was nothing—there isn't anything, to my knowledge that would preclude any company from negotiating job classifications for their own plant at the present time or any other time. [432-A]

Q. How about rates of pay attached to the various job classifications?

A. The only thing that has been more or less held in status quo is your rates of pay—not your interim rates but your top rates of pay.

Q. Well, is it your contention, Mr. Brown, that the union should be entitled to go ahead with the wage review boards with reference to the individual

(Testimony of Roy M. Brown.)

increases before the wage review board and at the same time fix with the company job classifications and rates of pay for the job classifications?

A. Absolutely, in view of the fact that the company, referring to Consolidated, has arbitrarily set up their own job classification and rate ranges and they have been applied and are now in operation and none of these have been arrived at as a result of collective bargaining between the union and the company.

Q. Well, hasn't it been made clear by Mr. Persons that whatever job classifications and rates of pay that have been affixed thereto have been used as a guide only in the wage review when the case of the individual man was before the wage review board?

A. He has not so stated. It has been definitely testified to by Mr. Beck, your wage administrator, that these rate ranges have been applied and are in operation and they are not being used only as guide. That is a matter of court [433] record held in your last arbitration proceedings with the janitors.

Q. Well, it is your contention then that the union is entitled to review the individual person and also to treat with reference to job classifications and the ranges of pay attached to the respective job classifications?

A. All of that is certainly within the purview of or the provinces of labor relations between the company and the union—collective bargaining.

(Testimony of Roy M. Brown.)

Q. Well, I am talking about this particular contract which, to my mind, you can't have your cake and eat it, too. I mean, it isn't your interpretation of the agreement—and this may be objected to, that the wage review board of the individual merit increases provided every six months by the company was to be the method by which the wage review of the union and non-union men in your jurisdiction were to be fixed?

A. Not by any stretch of the imagination.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington) What was your answer to Major Fleet when you stated that he said the company was wrong about the interim increases in pay and offered to stop the increases?

A. That wasn't Major Fleet; it was Dave Fleet.

[434]

Q. Whichever it was, Dave Fleet or Major Fleet, you stated that the damage was done. What did you mean by that?

A. The company had already broken, let us say, the company had broken the law or violated our contract in relation to the granting of any increases in pay or any changes of wage status.

These increases have been made known to the men who were to be the recipients of these increases and the committeeman was never consulted or never dealt with over these increases.

Q. What was the effect of that on the union?

(Testimony of Roy M. Brown.)

A. The immediate effect was, you might say, an absolute arrogance or disrespect of the union by the men who were being granted these increases, because they told them they would get them whether the union objected to it or not.

Mr. Riggs: Now, wait a minut—you mean—well, go ahead.

Q. (By Mr. Harrington) Go on, finish up, if you have an objection.

Mr. Riggs: No, go on, finish.

Q. (By Mr. Harrington) I was going to another subject. What was the union's objection to this third shift business? Specifically, what did the union object to in relation to putting on the third shift? We have had testimony of bonuses and eight hours pay for six hours, but just what was the union's [435] specific objection?

A. The company, without ever discussing with the union their controversial position in relation to what constitutes the sixth or seventh shift, put into effect their interpretation of the matter without ever consulting the union or dealing with the union over an interpretation of contract.

Q. These job classifications that you testified were set up unilaterally by the company—that is, not negotiated with the union when those job classifications were set up and put into effect?

A. Well, they were being applied in a minor manner when I came to San Diego in December, 1941.

Q. And when was this conference in Hollywood and this conference in Washington held?

(Testimony of Roy M. Brown.)

A. The wage stabilization conference was held, or was called by Paul Porter on July 6th.

Q. Of what year?

A. Pardon me—that is correct, yes.

Q. Of what year? A. 1942.

Q. And this Washington business, when did that occur that you testified about?

A. That was supposed to have convened in Washington on the 22nd of July, 1942.

Mr. Harrington: I have no further questions.

[436]

Recross Examination

Q. (By Mr. Riggs) You said just now that somebody told these men in the inspection department who got these interim raises, that they would get them whether or not the union wanted them to get them or not.

You don't know that of your own knowledge, do you? A. They didn't tell me that.

Q. I mean the men didn't tell you that, did they?

A. Yes, they did. You mean the men that were to receive these increases?

Q. Yes. A. Those men never told me.

Q. So you don't know that. You don't know that that statement was made to them by anyone representing the company, do you?

A. We can produce witnesses to substantiate the statement?

Q. They were told that they would get the increase whether the union wanted it or not?

A. Men that were supposed to be granted these

(Testimony of Roy M. Brown.)

increases, prior to the time that it had been discussed with the union, were told that they would get increases regardless of whether the union agreed to it or not.

Q. Now, doesn't the union want to get the names of the men who were up before the review board in advance so that the union men can contact them and suggest that they join the union? [437]

A. I believe that our union men are educated a little better than that. We know that we represent all of the people in this plant who are hourly paid and they represent those people to the best of their ability.

Q. Do you think, Mr. Brown, that in this wage review board, after hearing Mr. Shannon testify, that the union committeemen look after the non-union men exactly the same way they do after union men?

Mr. Harrington: I object to that. That is a matter of opinion. It is an opinion question.

Trial Examiner Hektoen: We are getting over into that collateral issue again.

Mr. Riggs: All right, I will withdraw the question.

Trial Examiner Hektoen: Anything more?

Mr. Riggs: That is all.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: Mr. Brown, have you any idea when the notice to the effect that the third shift was to be paid so and so was posted in the plant?

(Testimony of Roy M. Brown.)

The Witness: It was approximately four or five days prior to the time that the third shift operations went into effect.

Trial Examiner Hektoen: May we have a copy of that notice?

Mr. Riggs: Yes. [438]

Trial Examiner Hektoen: If one exists I would like to have it in the record.

Mr. Riggs: Was it a bulletin posted on the board, Mr. Brown, that you referred to?

The Witness: I presume it was.

Trial Examiner Hektoen: Will you look into that, Mr. Riggs?

Mr. Riggs: Yes.

Trial Examiner Hektoen: And immediately thereafter on the 12th you wrote to Mr. Wiseman protesting about it?

The Witness: That is right.

Trial Examiner Hektoen: And the first you knew about the scheme was when the bulletin was posted; is that correct?

The Witness: Men from the shop began to call into the union—began to call in the union committee man and such as that.

Trial Examiner Hektoen: And after you received Wiseman's reply of March 14th, did you thereafter get in touch with the respondent about it in any way?

The Witness: Not officially. In other words—

[439]

(Testimony of Roy M. Brown.)

Trial Examiner Hektoen: That's what I didn't understand.

The Witness: We had meetings almost continuously between our business agents. In other words, our labor relations committee and the labor relations committee of the company, and when we were in those meetings ordinarily during the course of a meeting we would point out that the union's position was still that the company was wrong and in violation of the law in instituting the present third shift method of operation in regard to Sundays.

Q. (By Trial Examiner Hektoen) What was your position? That they were wrong in their interpretation of the contract?

A. They were wrong in instituting that shift without first having discussed it with the union and having a clarification, and they were wrong in interpreting the contract one way, and saying: Well, this is the way we interpret it and that's the way it is going to be done.

Q. Did they reiterate that statement in the subsequent, what you call informal or unofficial meetings?

A. Yes, their position was very firm. They stated their position was that was the sixth shift and not the seventh.

Q. And the matter had not been discussed. How was it left when you had ironed out some, at least, of the third shift details before the original bulletin about this matter was posted? [440]

A. The question was never mentioned.

(Testimony of Roy M. Brown.)

Q. It was never mentioned?

A. During those discussions when we made the arrangements in regard to the six and one-half hours for eight hours' pay, plus the 8 cent bonus, it was never mentioned, what was in the minds of the company, to institute a change in the work week, when the work day would start.

Q. I see. Now, somebody, several people have testified that after the December 13 episode, the union said it was going to file charges. Did it file charges?

A. It did.

Q. That has nothing to do with this case, I take it, or are those charges in connection with this case?

A. I withdraw those charges.

Q. Those are withdrawn. After March 14 and this third shift business, there was also similar statements made.

A. What was the date?

Q. March 14, I think.

A. Oh, yes, in relation to the third shift.

Q. Yes. Were charges filed about that?

A. They were included. In other words, it was made an amended charge in the present charge.

Q. And that is in this case?

A. That is right.

Q. I see. Those are all the questions I have. [441]

Q. (By Mr. Riggs) At the conference, Mr. Brown, before the bulletin was posted, about the change from two to three shift operation, it was discussed at that time the third shift was going to start either at 11:00 or 12:00 o'clock at night, and

(Testimony of Roy M. Brown.)

was going to start work Monday night and go through to Saturday, wasn't it? A. No.

Q. It wasn't discussed that they were to have eight hours' pay for six and one-half hours' work?

A. Plus 8 cents.

Q. Plus 8 cents bonus above their base pay?

A. The shift was to start 12:00 midnight.

Q. And it wasn't stated whether it would start Sunday at midnight or Monday night at midnight. Is that your point?

A. The terms of the contract were to be met, which provides for a work week of five days beginning Monday through Friday.

Q. Wait a minute. Was it discussed as to whether the first shift would begin Sunday night at midnight or Monday night at midnight?

A. It was not.

Q. Did the question of payment for what work was to be done on Sunday come up, as to whether it was to be time and a half for overtime or double time?

A. No, the company indicated their willingness to abide by the provisions of the contract in relation to shifts and [442] overtime.

Q. I don't know exactly what you mean by that. Did the question come up, then, as to whether this shift was to begin Saturday night or Monday night?

A. I have tried to state, Mr. Riggs, that the company indicated their willingness to operate this shift in conformity with the contract, which provides for the work week of Monday through Friday.

(Testimony of Roy M. Brown.)

After that, the method the provisions set up in the contract would be complied with.

Q. Who said that?

A. Representatives of the company's labor relations committee, namely: Mr. Bowers, Mr. Fleet, and Mr. Wiseman.

Q. How long did these conferences precede the posting of the bulletin

A. I couldn't definitely state the exact number of days. It was just shortly preceding the institution of the shift, because it came up rather rapidly, insofar as the company's attitude was concerned. They made the change all of a sudden.

Q. Isn't it a fact your entire grievance with reference to this shift on Sunday arises from a difference of interpretation about the terms of the contract?

A. Not entirely; not entirely. Our grievance is that the company did not consult or discuss with the union prior to the changing of what constitutes a work day, what their [443] interpretation was. They merely decided what they were going to do and applied it, put it into effect.

Q. They said they were going to abide by the terms of the agreement and since that time they have said to you that they thought the agreement was perfectly clear and that there was no need for discussion about it, haven't they?

A. Not in those words, no. The fact of the matter is, the labor relations committee of the company was divided amongst themselves. Glenn Bowers con-

(Testimony of Roy M. Brown.)

ceded that the union was right in our contention. Somebody knocked Glenn's ears down. I don't know who, but he didn't get very far.

Trial Examiner Hektoen: Anything else, Mr. Harrington?

Mr. Harrington: No, I have nothing further.

Trial Examiner Hektoen: That is all. Thank you, Mr. Brown.

(Witness excused.)

Trial Examiner Hektoen: It is stipulated by and between all counsel that line 8 on page 285 of the record be amended to read as follows:

"Q. Thereafter, when you saw Stark and Newman, Newman got rather mad?"

We are in adjournment until 1:30.

(Whereupon, at 12:30 o'clock p.m., a recess was taken until 1:30 o'clock p.m. of the same date.) [444]

After Recess

(The hearing was reconvened at 1:30 o'clock p.m.)

Trial Examiner Hektoen: The hearing will come to order.

Mr. Riggs: At the close of the hearing yesterday I was requested to produce copies of any petitions which were circulated among the employees on or about December 13, 1941, which is Board's Exhibit No. 15, signed by Mr. Laddon with reference to working on Sunday at time and a half.

I produce now two volumes of petitions, one being

petitions signed by the day shift employees and the other one petitions signed by the night shift employees who desired to work on Sunday.

Mr. Harrington: My idea was we might introduce one petition as representative of the rest of them.

Trial Examiner Hektoen: Why not read the contents or the writing at the top of the petition into the record?

Mr. Riggs: In order to avoid putting in a multiplicity of petitions in evidence, I will put on the record the heading of one of them.

They read as follows:

"Consolidated Aircraft Corporation, San Diego, California.

"In view of the present war situation we, the undersigned, offer to work this Sunday at time and a half."

Then the names of the employees follow in pencil who signed the petition. [445]

Trial Examiner Hektoen: Very good.

Mr. Riggs: I would like to have a concession from Mr. Harrington, to avoid the necessity of proof on the subject, that all of the employees who did work on that particular Sunday, the 14th of December 1941, received pay at double time.

Mr. Harrington: It is so stipulated.

Trial Examiner Hektoen: Very good.

Mr. Harrington: I have also asked Mr. Riggs and he has kindly consented to furnish us with Mr.

Arthur J. Fisher's service record at some subsequent stage in these proceedings.

Mr. Riggs: Mr. Burr has already telephoned for that to the personnel office.

Mr. Harrington: Thank you very much. The Board rests.

Mr. Riggs: Before making any motions, I want to reserve my right on the record, which I have already reserved, to continue briefly, probably, the cross examination of Mr. Blake, Mr. Condon and I would also like to add Mr. Barnes, Martin and Perry.

Trial Examiner Hektoen: I have no objection.

Mr. Harrington: I have no objection. I believe we agreed to that but I don't know whether or not the gentlemen are available now, Mr. Riggs. I didn't know you were going to call them at this time.

Mr. Riggs: I am not going to call them now. I am not [446] prepared to continue their cross examination any further than I have because of the fact that the people who are in possession of the facts with reference to their testimony, are not at present available and in San Diego.

Mr. Harrington: I thought you meant that you wanted them immediately.

Mr. Riggs: No, I don't want them right now.

Now, Mr. Examiner, before proceeding with my case, I would like to make a motion to dismiss the charges contained in paragraph 4 of the complaint upon the ground that there has been no proof adduced that the company at the present time is discriminating against union committeemen; hinder-

ing them or preventing them from performing their duties as committeemen; inducing men to resign—inducing employees to resign as a protest against discrimination against union committeemen; threatening the discharge of employees and the cancellation of departmental transfers granted employees if grievances were presented on their behalf; that the company is offering rewards to employees to induce them to give up their union membership and union activities; that it is advising employees that the union will not bargain for them and instructing employees not to remain members of the union, and advising employees that the union would be of no benefit to them.

Trial Examiner Hektoen: You are quoting the paragraph [447] that alleges the respondent is not at the present time doing that. The complaint, however, alleges it has done these things in the past. Is that included in your motion?

Mr. Riggs: I was going to make that the subject of a separate motion.

Trial Examiner Hektoen: The motion is denied.

Mr. Riggs: I make the same motion with reference to the conduct of the company in the past, during the period from February 1940 and from May 1941 up to date.

Trial Examiner Hektoen: Same ruling.

Mr. Riggs: I move to dismiss the charges contained in paragraph 10 of the complaint upon the ground that there was no adequate proof that the company at the present time is refusing and failing

to bargain collectively in good faith with respect to rates of pay, wages, hours of employment and conditions of employment with the union.

Trial Examiner Hektoen: Same ruling.

Mr. Riggs: As set forth in paragraph 10.

Trial Examiner Hektoen: Same ruling.

Mr. Riggs: I renew the motion with reference to the period between June 12th, the date of the union, and the present time.

Trial Examiner Hektoen: Same ruling.

Mr. Riggs: I move to dismiss the charges contained in paragraph 6 of the complaint with reference to the discharge [448] of Oliver H. Williamson, upon the ground that the proofs show that the matter was adjusted between the company and the union satisfactorily to the union.

Trial Examiner Hektoen: Motion denied.

Mr. Riggs: I move to dismiss the complaint generally upon the ground that the proof fails to sustain the allegations of the complaint.

Trial Examiner Hektoen: Denied at this time.

Mr. Riggs: I will endeavor to arrange my proofs as orderly as I can, but I may have to call some witnesses out of order.

First, I will try to take up, Mr. Harrington, the Williamson case.

Mr. Ryan: Mr. Riggs, before we go any further with respect to that letter which you introduced in evidence this morning, a letter from Mr. Brown, I believe to Mr. Walsh, requesting that Mr. Williamson's case be dropped, or words to that effect, we

now have a copy of a letter written to Mr. Brown in reply to that letter, which was written by Mr. Roger Maquire, Field Examiner of the Los Angeles office, who was answering for Mr. Walsh, and I believe to complete the record in that regard, it would be well to have it in evidence.

We do not have the original but we do have a copy of it.

Mr. Riggs: Are you offering it in evidence?

Mr. Ryan: Yes. [449]

Mr. Harrington: Will you mark this?

(The document referred to was marked as Board's Exhibit No. 24 for identification.)

Mr. Harrington: This serves to complete the correspondence and I offer it in evidence.

Mr. Riggs: I object to it as immaterial and irrelevant. My point is that the union was satisfied with the fact that the National Labor Relations Board did not desire the charges to be withdrawn. It is immaterial and irrelevant because that agreement with the union was reached by negotiations.

Trial Examiner Hektoen: Let this be off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

The objection is overruled and Board's Exhibit 24 may be admitted.

(The document referred to, heretofore marked as Board's Exhibit No. 24 for identification was received in evidence.)

BOARD'S EXHIBIT No. 24

May 1, 1942

In reply refer to:

Consolidated Aircraft Corp.

XXI—C—1989

Mr. Roy M. Brown
Grand Lodge Representative
International Association of Machinists
1054 - 3rd
San Diego, California

Dear Mr. Brown:

This will acknowledge receipt of your letter of April 30, 1942, in which you state the case of Oliver H. Williamson has been settled to the satisfaction of your organization.

After conferring with the Regional Director on this matter I am instructed to inform you your negotiations with the company in this regard will in no manner interfere with the investigation. Mr. Williamson's name will remain in the charge and events related to his discharge will be examined together with other allegations now under consideration.

Yours truly,
ROGER G. McGUIRE
Field Examiner

RGM/dp

Mr. Riggs: Officer Crousen.

WELDON O. CROUSEN

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs): Will you please give your full name and address to the stenographer?

A. Weldon O. Crousen, 1268 Robinson Avenue, San Diego, [450] California.

Q. Are you employed by the Consolidated Aircraft Corporation, and if so, in what capacity?

A. As police officer, yes.

Q. And how long have you been such?

A. About nine months.

Q. Were you a police officer in April 1942 when Mr. Williamson was discharged? A. Yes.

Q. Will you please state what you know about that matter for the benefit of the Examiner?

A. Well, I was called—it was a termination—I was called to building 1 and I was sent to the wrong building. I called my office and asked where to go and they told me to go to another place and that was still the wrong place. I called the third time and went to the right place this time and when I got there Mr. Williamson was talking very loud and had 12 or 15 men standing around him listening, and it all came up over Mr. Brown being fired.

Q. Now, what building was this in and at what time was it?

(Testimony of Weldon O. Crousen.)

A. It was in building 1 at Column No. 1-D-20.

Q. And that is at the Home plant?

A. No, sir; that is plant No. 2.

Q. The Parts plant?

A. Parts plant. [451]

Q. And was that your station at that time?

A. No—well, I was what they call general patrol—anywhere in the plant I wanted to go.

Q. And do you know who called you?

A. Sergeant Frayz.

Q. How long was it after you received the call before you arrived at the place where Williamson was?

A. Oh, it must have been about eight minutes.

Q. Now, what time of night was it?

A. I don't recollect just what time of night it was.

Q. Was Mr. Brown there?

A. Yes, sir.

Q. Who else was there?

A. Well, the foreman was there.

Q. Who was that?

A. Well, I don't know his name but I would recognize the man if I seen him.

Q. Is he in the room?

A. That is right; the gentleman sitting with the glasses right back there. That is him right there (indicating).

Q. And his name is——

A Voice: Eastin.

The Witness: That is right.

(Testimony of Weldon O. Crousen.)

Q. (By Mr. Riggs): What was Mr. Williamson doing—where was he; was he on the ground floor? [452]

A. Yes, sir.

Q. Now, were these men that were listening to him collected around him or were they off to one side?

A. Well, some of them was around him and some was standing around over to one side.

Q. And how many did you say were there?

A. Well, around 12 or 15.

Q. And what was Mister—what did Mr. Williamson say?

A. Well, he said that he had seen that go on—firing one man at a time until he wasn't going to stand for it any longer. He said:

“They bring a man in there and keep him until about the time he would get where he know what he was doing and when he produced the work he was supposed to do they would fire him.”

And that the foremen were working for a foreign government and he had heard them in German talking to each other and when anyone walked up, why, they would shut up.

Q. Did he say anything about who was running the plant? A. No, sir.

Q. Was Mr. Walter Brown there?

A. Well, I wouldn't know.

Q. Did you take him afterwards— —

A. Oh, you mean the man—

Q. He was the man being discharged? [453]

(Testimony of Weldon O. Crousen.)

A. Yes, sir, he was there.

Q. You escorted him to the office where he received his time and out of the plant?

A. That is right.

Q. Did Mr. Brown say anything during this time? A. No, sir.

Q. How long were you there before Mr. Liegal arrived?

A. Oh, 10 minutes.

Q. How long did this talk that Mr. Williamson was doing continue?

A. Well, he talked about five minutes and I got him quieted down. I told the men to go on back to their work; it wasn't no time to settle grievances in a place like that—that there should be a conference for that purpose.

Q. At any time did you hear Mr. Williamson tell the men to go back to work? A. No, sir.

Q. Did they go back to work when you told them to go back?

A. Yes, sir, went back to their benches.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington): You say Williamson was talking in a loud voice in regard to him?

A. Yes, sir.

Q. What do you mean by a loud voice? [454]

A. Well, he was almost shouting. He was talking where everyone fifty feet from him could hear him, whenever there is as much racket as there are going on in the plant.

(Testimony of Weldon O. Crousen.)

Q. How many men were present, did you say?

A. Around 12 or 15 quit benches and was standing around them.

Q. Can you give the names of any of those 12 or 15? A. No, sir.

Q. What did you do when you came up to this group?

A. Well. I asked the men to go back to work and asked him to quieten down; it was not time to settle grievances.

Q. And how long were you there, did you say, before Liegal arrived?

A. Around 10 minutes. [455-456]

Mr. Harrington: No further questions.

Mr. Riggs: Thank you, that is all.

Q. (By Trial Examiner Hektoen): Officer, how long did you stay after Liegal arrived?

A. Just a minute.

Q. Did you talk to him?

A. Mr. Liegal?

Q. Yes.

A. No.

Q. You didn't take Mr. Williamson out?

A. I took Mr. Brown home.

Q. You didn't take Mr. Williamson anywhere?

A. No, sir. Officer Paxton taken Williamson.

Trial Examiner Hektoen: That is all. Thank you very much.

(Witness excused.)

Mr. Riggs: Mr. Eastin.

JAMES HARVEY EASTIN

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs): Give your full name and address to the reporter.

A. James Harvey Eastin, 4186½ Falcon. [457]

Q. Are you employed by Consolidated Company, and if so, in what capacity?

A. I am employed by Consolidated, assistant foreman in the jigs and fixtures department.

Q. Is that in Plant 2? A. Yes, sir.

Q. What was your position in April of 1942?

A. Same position.

Q. Who was your immediate superior at that time?

A. Milton Hangen.

Q. What is his position?

A. He is a foreman.

Q. Is there more than one assistant?

A. No, sir.

Q. Did you have a conversation with Mr. Hangen in April, 1942, about Mr. Walter Brown?

A. Yes, sir.

Q. Will you state what that was?

A. I was told that Mr. Brown was being discharged at 9:00 o'clock, and at half-past eight I

(Testimony of James Harvey Eastin.)

should call the plant policeman to escort him out of the plant.

Q. Did you call a plant policeman?

A. I did.

Q. What happened?

A. The policeman didn't come at 8:00, and I called the [458] second time and he didn't come, and the third time the policeman came. It was about eight or ten minutes to ten.

Q. Was the policeman who came the previous witness? A. Yes, sir.

Q. Did you see Mr. Williamson on that occasion? A. Yes, sir.

Q. Where did you see him?

A. Mr. Williamson objected to Mr. Brown being escorted out of the plant.

Q. What did he say?

A. He said that was no way to treat an American boy, and he said we were foreign agents if we discharged men indiscriminately, if we didn't treat the boys right, that we acted as foreign agents, that we were pushing good American boys around and taking bread and butter from women and children.

Q. Was his voice loud or soft?

A. His voice was very loud.

Q. Was he shouting?

A. He was shouting. I would say when a man makes himself heard to a gathered group, as he did in the department, where they are riveting wings, he is almost yelling.

(Testimony of James Harvey Eastin.)

Q. How many men clustered around while Mr. Williamson was talking?

A. Anywhere from nine to fifteen. I didn't count them. [459] I couldn't say how many men were there.

Q. Who was Mr. Williamson talking to? Directly to you, or to the men?

A. It was directed to me, it was directed to the policeman, and it was directed to the men that were standing around.

Q. Was Mr. Walter Brown there?

A. Yes, sir.

Q. What did he say, if anything?

A. Mr. Walter Brown didn't say a thing.

Q. Was anything said by Mr. Williamson about whether he was acting as a union committeeman or not?

A. When this started, the officer stated, said to Williamson that it should be settled with a committeeman, that that was no way to settle it. Williamson stated to the policeman and I that it wasn't a union matter, that it was a matter of American citizens, and that the F. B. I. should be notified of the things that were going on in the plant.

Q. Did Mr. Williamson take off his badge?

A. Not at this first. When he talked—Mr. Liegal asked Williamson if it was a union matter or not, and Williamson ripped off his badge at that time. He had his badge on while he was talking to the officer and I.

(Testimony of James Harvey Eastin.)

Q. How long after Williamson began to talk was it before Mr. Liegal arrived?

A. I would say 10 or 12 minutes. [460]

Q. Was anything said about Mr. Williamson ought to take off his badge if he was talking that way?

A. Will you repeat that?

Trial Examiner Hektoen: Read the question.

(The question was read.)

The Witness: I don't get what that means. There was nothing said about Williamson taking off his badge. There was something said about Williamson acting as a committeeman, but nothing about him taking off his badge.

Q. (By Mr. Riggs): Did he take off his badge?

A. Yes, he took off his badge when he talked to Mr. Liegal. He was wearing a badge when he talked to me, when he said it wasn't a union matter, that he was acting as an American citizen, not as a union committeeman.

Q. Did Mr. Williamson say anything about Nazis?

A. I don't remember whether he said "Nazis" in particular, but he specified German agents.

Q. Did he say anything about the Axis powers?

A. Yes, there was Axis powers mentioned.

Q. What was that?

A. German agents. He said we were agents, we were German agents, we were Nazis.

Q. After Mr. Liegal arrived, continue to state what happened.

(Testimony of James Harvey Eastin.)

A. After Mr. Liegal arrived I got out of that just as quick [461] as I could. I was supposed to be in Building 2 while all this was going on, and when Mr. Liegal arrived, I let Mr. Liegal handle it.

Q. Was Mr. Liegal your superior?

A. Mr. Liegal is my superior indirectly. He is Hangen's superior, and Mr. Hangen is my superior directly.

Q. Mr. Liegal was not then connected with the jigs and fixtures department?

A. He was not then connected with the jigs and fixtures department, but he is in charge of the whole plant, so he is my superior.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington): Where did you see Williamson that night?

A. Where did I see Williamson?

Q. Yes.

A. This happened in 1-D-20, Building 1, just below Hangen's office.

Mr. Riggs: May I interrupt? When you say: 1-D-20, that is the number of the pillar?

A. 1-D-20 is the number of the pillar, approximately where Hangen's office was located.

Q. (By Mr. Harrington): How many were clustered around Williamson at that time? [462]

A. I would say nine, ten, twelve, or fifteen; a good group. I didn't count them.

Q. Can you name any of those men?

(Testimony of James Harvey Eastin.)

A. Not right offhand. I was too busy with Mr. Williamson to name any of the men.

Q. Where was your place of employment?

A. My place of employment is the jigs and fixtures department in Building 1 or 2. I generally work in 2 Building, but this night Mr. Hangen had gone out to lunch and I was in the office. The office that we work out of is in 1 Building.

Q. Were you present at the discussion between Williamson and Liegal?

A. Approximately a minute. I heard the incident of Mr. Liegal asking Mr. Williamson if this was a union matter, and Williamson said, "No," and ripped off his committeeman's badge. That's approximately all I heard. I got out of it just as quick as I could.

Q. You didn't hear Liegal say anything else?

A. I heard Liegal asking what it was all about, why the fuss, but I got out of it just as quick as I could.

Q. Did you hear Liegal say to him, "What the hell are you trying to pull off here?"

A. No, I never heard Liegal say that.

Q. Did you hear him say: "You are a rabble-rousing labor [463] agitator"?

A. No, sir.

Q. "And that you better watch out or you will be fired"?

A. No, sir.

Q. Did you hear him say anything in substance like that?

A. No, sir.

(Testimony of James Harvey Eastin.)

Q. Did you attend a conference on the next night with the company and union officials?

A. I attended a conference. I couldn't tell you if it was the next night or what night it was, but it was after this incident.

Q. And at that conference did Liegal say that he had not personally seen Williamson arousing or agitating the workers?

A. I couldn't substantiate that statement.

Q. Did he say anything in substance similar to that?

A. At that meeting?

Q. Yes.

A. No, I couldn't—I don't remember if there was anything like that said.

Q. Did Hangen make a statement that Williamson's work was of the very best?

A. Yes, he did.

Q. He did? A. Yes.

Q. Was it pretty noisy where Williamson was talking that night in the plant? [464]

A. Where they rivet wings, it is bound to be noisy.

Q. Is it necessary to talk quite loudly to be heard, that is, to be heard at any distance?

A. Well, generally we talk with our heads quite close together.

Q. But you have to talk loudly to make anybody hear you if you are far away from him?

A. Yes, you have to raise your voice a trifle.

Mr. Harrington: I have no further questions.

(Testimony of James Harvey Eastin.)

Redirect Examination

Q. (By Mr. Riggs) Did you have the talks with Mr. Brown previous to the time he was terminated?

A. No, sir, Mr. Hangen had the talks. I knew nothing about his termination, the termination of Mr. Brown, until Mr. Hangen was discharged, and I was told to call the plant policeman.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Thank you.

(Witness excused.)

Mr. Riggs: Mr. Hangen.

MILTON C. HANGEN

called as a witness by and on behalf of the Respondent, having been first duly sworn was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Give your name and address to the reporter. [465]

A. Milton C. Hangen, 4759 Valencia Drive, San Diego.

Q. Are you an employee of the Consolidated Company, and if so, in what capacity?

A. I am employed as foreman in the jigs and fixtures.

Q. That is, the jigs and fixtures department in the second shift, Plant 2?

(Testimony of Milton C. Hangen.)

A. I was at the time, yes.

Q. You are not employed at that now?

A. No, I am on shift 1, now, instead of shift 2.

Q. You were foreman of that department in April, 1942? A. I was.

Q. Were Mr. Williamson and Mr. Walter Brown both in that department?

A. They were.

Q. Will you state what happened with reference to Mr. Walter Brown on or about April 14, 1942?

A. Walter Brown was called up to my office to be given an insurance policy and the clerk wasn't there when he arrived, so I brought up the little incident of what happened between him and his lead man, Mr. Ewart. I found, during the course of the evening, that a few days previous he had refused to work for Mr. Ewart, and in bring the subject up to him, wanting to know why, he was quite evasive at first. He said he just didn't like the man. But I finally drew out that he didn't want to work for the foreman because Mr. Ewart spoke with a [466] German accent.

Then I told him if he wanted to continue working for me he would have to work with whoever I put him under, whether he spoke a German accent or not. This he refused to do. So, just before leaving he said to me: "Well, I suppose that means I am through."

I said, "Yes, it means you are through tonight at 11:00 o'clock," not knowing how soon he would

(Testimony of Milton C. Hangen.)

get his money, I figured 11:00 o'clock I would leave him out. After he left, I called Accounting, to find out how soon I could get the man's money, because I figure he may go down in the shop and cause trouble, and it is better when firing a man that you get the man's money at 9:00 o'clock, and I changed the termination to read: Discharged at 9:00 o'clock.

Q. What was the original termination which had been put upon his card?

A. "Discharged, refused to take orders from the lead man."

Q. Was that afterwards changed?

A. That was afterwards changed.

Q. Will you tell how that came about?

A. That came about in the meeting that was held in Mr. Larimore's office with Mr. Wiseman present, and I believe they felt to take the easiest course, they would change it to "quit" instead of "discharged."

Q. Did anyone say that should be done in order not to [467] interfere with his employment elsewhere?

A. I believe that was the reason for changing it, but I won't say for sure.

Q. Did Mr. Brown say that he wouldn't have done anything to abuse or mistreat him in any way?

A. The only thing he had against Mr. Ewart was he spoke with a German accent.

Q. Did you ask him to give any further reasons why he didn't want to work for Ewart?

(Testimony of Milton C. Hangen.)

A. I did, but there weren't any other reasons he could give me, and he acted like a spoiled child.

Mr. Ryan: I object to that as a conclusion of the witness and move to strike it.

Trial Examiner Hektoen: It may be stricken. He didn't say anything else?

The Witness: No, sir.

Q. (By Mr. Riggs) When you left, did you say anything to Mr. Eastin about Brown being terminated?

A. Yes. I had an appointment with one of the other foremen, a dinner appointment, so I instructed Mr. Eastin to call the plant police at 8:30 to escort Mr. Brown out, that I had discharged him for refusing to work for Mr. Ewart.

Q. What did you do then?

A. I went out in the yard. It was customary at that time for some of us foremen to patrol the yard during the lunch [468] hour to keep the running down; we stopped the men from running and throwing trash around. After the whistle blew, I left and went to lunch.

Q. Did you see Mr. Williamson at all that night?

A. Yes, I did.

Q. Where did you see him?

A. Where did I see him? I saw him before I went out to lunch, yes.

Q. Were you there when Mr. Williamson was talking to Mr. Eastin? A. No, I wasn't.

Q. You didn't hear Mr. Williamson saying anything about Mr. Brown's discharge?

(Testimony of Milton C. Hangen.)

A. No, I didn't.

Q. You weren't there at that time?

A. No, I wasn't.

Mr. Riggs: That is all.

Wait a minute.

Q. (By Mr. Riggs) Did you see Mr. Williamson later with Mr. Liegal? A. Yes, I did.

Q. What happened then?

A. As I entered the plant, going back to my office, I met Mr. Liegal and Mr. Williamson heading, apparently, towards Mr. Liegal's office. I stopped and asked them what was [469] going on, because it seemed out of place to see Mr. Williamson and Mr. Liegal together.

Mr. Williamson started to explain, he was quite excited, but I calmed him down. Mr. Liegal explained it all come up over the discharge of Mr. Brown, that there was a little rumpus caused near my office. Then Mr. Williamson proceeded to state how he was working for Nazi bosses and we were gradually getting rid of all the good American boys and keeping nothing but the Germans, and he thought it wasn't—he said he felt it wasn't a union problem any more; he didn't care to talk with us; he preferred to call in the F. B. I. on the case because he felt we weren't the right ones to talk to about it.

Q. Did Mr. Liegal give you any instructions at all?

A. Yes. Mr. Liegal said to me, he said: "This looks like a hopeless case. I can't do anything

(Testimony of Milton C. Hangen.)

with him. I am going back to the office. You take him down and do what you see fit. I know what I would do.”

Q. What did you do?

A. I took him down to the office, and not being a Nazi sympathizer, I hate to be called a Nazi sympathizer. Therefore, to stop him from ever spreading that around to any of the other men, I had no other course but discharge him for it.

Q. And you did discharge him? [470]

A. I did, yes, sir.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) In this incident about Brown refusing to work for Ewart, did Brown tell you at that time he wanted to quit?

A. Not to my knowledge, no.

Q. Did you tell him he could quit at that time, this conference you had before lunch?

A. No.

Q. What did you tell him at that time?

A. I told him we could not use his services any longer if he would not work where we put him.

Q. What did you mean when you said in your direct examination you did not want Brown going back in the plant because you were afraid he would talk?

A. Well, when an employee is leaving it is best they leave right then, instead of going back; when they know they are leaving as a rule, he won't be

(Testimony of Milton C. Hangen.)

on the job working, he will be around talking, and if he felt this man Ewart he was working for was a foreign agent, he is apt to try to influence others to believe the same thing.

Q. Where did you meet Liegal and Williamson that evening?

A. I met Liegal and Williamson I would say about 150 feet from the north entrance of the building. [471]

Q. And you had a conversation with him at that time?

A. We had a conversation there, yes.

Q. What was that conversation?

A. That conversation was to the effect, at first, I tried to find out what the reason was that he was with Mr. Liegal.

Q. What was said? Can you tell me what Liegal said and what Williamson said?

A. Liegal didn't have too much to say, outside of he explained to me that it all came up over this discharge of Mr. Brown and that Mr. Williamson had a group of men gathered around him, talking quite loudly, and waving his arms. Then Mr. Williamson proceeded to explain to me what happened there and about us Nazi sympathizers, and he at that time got very boisterous.

Q. What did he say? A. Pardon me?

Q. What did Williamson say? Give us his exact words.

A. He said he was working for Nazi bosses—his bosses were working for the Nazi government

(Testimony of Milton C. Hangen.)

and that we were gradually discharging the good American boys and keeping nothing but the German boys.

Q. Did Liegal say to Williamson at that time: What do you mean, German? I am a German; you are too, only you don't have sense enough to know it, or words to that effect?

A. He said words similar to that. He didn't say: You are [472] a German. He said: You are a foreigner and don't know it. And of course, in other words, we all date back, we are all foreigners.

Q. Can you recall what Liegal said?

A. Yes. Liegal said he was of German parentage, and we all are foreigners of some type; even you, yourself. Or words to that effect. I don't know the exact words.

Q. Did Liegal say to Williamson: "You wouldn't have anything to talk about. You haven't said anything smart yet; you are just plain dumb"?

A. If he did, I don't recall it at all.

Q. Did you attend a conference the following night when this case was taken up?

A. I did.

Q. At that conference did you state Williamson's work was very excellent and that he was a good and considerate committeeman?

A. That is correct.

Q. Is it correct that Williamson never referred to you specifically as a Nazi sympathizer?

A. Ever referred to me?

Q. Yes.

(Testimony of Milton C. Hangen.)

A. Well, I figured he referred to me because I was his boss.

Q. What made you think he referred to you, and what did he say? [473]

A. He said he was working for Nazi sympathizers. Not Nazi sympathizers. That is wrong. His bosses were working for the Nazi government.

Q. Might he not have said "the Axis" instead of "Nazi"?

A. I don't recall during our conversation where he used the word "Axis."

Q. At this meeting the evening following his discharge, did Liegal admit he hadn't personally seen Williamson arousing or agitating the workers?

A. Will you read that again?

Trial Examiner Hektoen: Read the question.

(The question was read.)

The Witness: I don't recall that. [474]

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all.

(Witness excused)

Mr. Riggs: Mr. Liegal.

HENRY J. LIEGAL

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your full name and address, please?

(Testimony of Henry J. Liegal.)

A. Henry J. Liegal, 810 Avalon Court, Mission Beach, San Diego.

Q. Are you the factory superintendent of the second shift in plant 2 of Consolidated?

A. I was at the time.

Mr. Harrington: At what time?

The Witness: I am day superintendent now.

Q. (By Mr. Riggs) You are day superintendent now? A. Yes, sir.

Q. In April 1942 were you the factory superintendent of the second shift in plant 2?

A. Yes, sir.

Q. How many departments were there under you?

A. Well, in fact the whole plant was under me.

Q. And did that include the jigs and fixtures department? A. Yes, sir. [475]

Q. Of which Mr. Hangen was the foreman?

A. Yes, sir.

Q. Do you remember the circumstances surrounding the discharge of Mr. Williamson on the evening of the 14th of April 1942?

A. Yes, sir.

Q. When did you first hear of the matter?

A. I was called to the phone by the plant police and was notified that there was a little trouble down in the tool and jig department.

Q. What did you do?

A. I started down there and got down there, oh, I would say, between 8:30 and 9—I think somewhere in that neighborhood.

(Testimony of Henry J. Liegal.)

Q. What did you find when you got there?

A. I found the officer there and in looking around the side of the office I found Mr. Williamson with a crew of men around there—I would say approximately, might have been 8, 9, 10 or something like that.

Q. What was Mr. Williamson doing?

A. He seemed to be, in my opinion, he was using a very loud tone of voice and seemed to be kicking about something. I couldn't understand just what it was all about.

Mr. Harrington: I object to statements like "in my opinion" and "it seemed to me." Can you tell us what he did?

Q. (By Mr. Riggs) Was he talking in a loud tone of voice [476] or soft tone?

A. Loud tone of voice.

Q. Was he surrounded by any people and if so, how many?

A. He was surrounded, I would say, by 9 or 10 or 12 men within a distance of 5, 10 or 15 feet.

Q. Who was he talking to?

A. He was addressing the men in general.

Q. What was he doing with his arms?

A. Well, I noticed when Mr. Williamson gets mad he goes like this (demonstrating) and everything was going this way.

Mr. Riggs: The witness is waving his arms, around his head.

The Witness: He was all excited is the way I would look at it.

(Testimony of Henry J. Liegal.)

Trial Examiner Hektoen: Was he doing that then?

The Witness: He was doing it as I came there. I walked over to the group and I called Williamson to one side and asked him what it was all about.

Well, he made the remark then, he says:

"The Union is out of this."

He took his button off and—pulled it off and put it in his pocket and he said, he says:

"I am on my own," he says, and I tried to quiet him down. In fact that is all I could do or try to do for the next five minutes. Finally I told him: [477]

"Let us take a walk down the aisle and go to my office," and I said: "We will talk this over there."

Q. (By Mr. Riggs) During the five minutes that you refer to, did he stop talking at any time?

A. He did calm down for awhile and we started out.

Q. Well, what did he say when he was talking to the men that were around him?

A. He made remarks about the foremen working for Germans.

Q. State what he said, or if you can't remember the exact language, give the substance of it?

A. He made remarks about working for—the foremen were working for the German Government—the Nazi Government, and words to that effect, and I did tell him that all of us were to some

(Testimony of Henry J. Liegal.)

extent foreigners—I, personally, my grandparents were born in Germany and naturally all of us were to a certain extent foreigners—that is, they were born in a foreign country.

Q. When did you say that?

A. I made the remark, I think, when I was standing there.

Q. What happened there? Did you ask Mr. Williamson to go to your office with you?

A. I did.

Q. Did he go?

A. Well, he started out from there and as we got down the aisle about 100 or 150 feet, Milton Hangen came along and [478] I said:

“Here comes Milt, let us stop and talk it over with him and we will have him come to the office with us.”

Q. State what conversation ensued then and as to who said it and if you can't give us the exact words, give us the substance of it?

A. Approximately the same thing came up again, about working for the Germans or Nazis.

Q. Wait a minute. Who said that?

A. That was what Mr. Williamson said and the thing got to the point where it started all over again in an uproar and finally I tried to quiet him down.

I said:

“Well, Milt,” I said, “you might just as well take over.” I says: “Use your own judgment in this case and do as you please.”

(Testimony of Henry J. Liegal.)

And I walked away from him.

Q. What did Mr. Hangen say?

A. Well, he took him towards his office then and I went toward my office.

Q. How long did Mr. Williamson continue talking to the men after you got there?

A. Well, I think we stood in the aisle just about three or four minutes.

Q. Did you see Walter Brown there? [479]

A. I seen a man at the tool crib who was checking in his tools, but I didn't stop to talk to him and I didn't know the fellow.

Q. You didn't know Walter Brown by sight?

A. No; I didn't know Mr. Williamson until that night.

Q. Had you ever seen Mr. Williamson before?

A. Never had seen him before.

Q. Was anything said by Mr. Williamson or by you about employees being escorted by a plant policeman after discharge?

A. Well, he did make a remark, I think, to the policeman—he didn't say nothing to me personally but, in fact, I am pretty sure he didn't say nothing to me outside of the policeman that he objected to having policemen come in and take anybody out of the plant like that, although I told him that was our—I told him that was the company's policy for us to do—in fact our orders were to call in a plant policeman at any time that somebody was discharged.

Mr. Riggs: That is all.

(Testimony of Henry J. Liegal.)

Cross Examination

By Mr. Harrington:

Q. When you came up to Williamson that evening, did you tell him that he was a rabble rousing labor agitator and he better watch out?

A. I didn't say that at all.

Q. Did you tell him that you could do plenty to him?

A. I did not. In fact I didn't even know the man so I [480] couldn't tell him that.

Q. Did you use any language similar to that?

A. No, sir.

Q. When you and Williamson met Hangen, what was that conversation?

A. Well, just a matter of repetition of just what happened there.

Q. Well, what was said?

A. About the foremen working for the German government or the Nazis.

Trial Examiner Hektoen: Wait a minute, Mr. Liegal. What we want is a picture of what happened when Hangen joined your group. That made three. Who started talking?

The Witness: I stopped the group there and I said:

"Here is Milt Hangen, let all three of us go to our office."

Well, I think Mr. Williamson started off then and between Milt and himself and myself, we got all excited.

(Testimony of Henry J. Liegal.)

Trial Examiner Hektoen: You got along fine for awhile. Then what did Williamson say?

The Witness: Well, he talked——

Trial Examiner Hektoen: Say what he said if you possibly can.

The Witness: I don't know. It was kind of confusing there. It is kind of hard to recall just what was said. [481] Everybody was excited, naturally, but I do know there was some remark about Mr. Williamson saying the foremen were working for Germany or the Nazis.

Trial Examiner Hektoen: And what did you say or what did Hangen say?

The Witness: That is where the remark came in, when I told them that I thought all of us to some extent or other were foreigners or something—foreign in some foreign country.

Of course, Mr. Williamson, he come out with the remark, I think I remember it, that his people came over in the Mayflower or something like that.

Q. (By Mr. Harrington): Did you say to Williamson that he was German too only he didn't have sense enough to know it?

A. By looking at him I wouldn't say he was German.

Q. Well, did you say that?

A. No, I didn't.

Q. At the conference following—at the conference the following evening—were you at that conference?

A. That was, I think, in the morning about a

(Testimony of Henry J. Liegal.)

week later. I think probably two or three days later. I am pretty sure it was around noon time, if I am not mistaken.

Q. Had you ever seen Williamson arousing or agitating workers prior to this incident?

A. I never knew the man. [482]

Mr. Riggs: He said he never saw him before.

The Witness: I never saw him before. In fact I might have saw him around the plant but I wouldn't know the man because there are eight or ten thousand people there and I wouldn't know him. I would know the foremen and that is about all.

Mr. Harrington: I have no further questions.

Redirect Examination

By Mr. Riggs:

Q. When you first came up to Mr. Williamson, when he was talking with some men around him, did you say anything about:

"It doesn't look very good for union committee-men to be standing around talking this way."

A. That is right. That is the time he took his button off and says:

"I am on my own and the union has nothing to do with this," or something similar to that.

Mr. Riggs: I have nothing further.

Recross Examination

By Mr. Harrington:

Q. Isn't it true that Williamson wanted to go to your office with you and talk with you in the pres-

(Testimony of Henry J. Liegal.)

ence of an FBI man; did he tell you that?

A. No, sir, he didn't say nothing about FBI at all.

Q. Did he say anything about talking in the presence of a government man or G-man? [483]

A. Didn't say a word. I was the one that suggested going to my office and also with Hangen to see if we couldn't straighten the thing out without having everybody looking on and making a scene and the thing got to the point where I couldn't talk with Mr. Williamson. He just got all excited, so I decided to drop it and let Mr. Hangen decide what to do himself.

Q. When you were talking to Williamson at that time before the two of you men, you and Hangen, did you tell him that it wouldn't be necessary for him to punch out the timeclock—that he could talk to you on company time?

A. No, I never mentioned that. In fact he could talk to me on company time all night long if he had to.

Q. Well, you stated that he said something about this "being on my own time"?

A. That is what he said.

Q. What did you say then?

A. I didn't say anything to that remark. He just took his button off. I think I mentioned then that we would start for our office.

Q. Did he say anything to you about that conversation—did he say anything to you in that con-

(Testimony of Henry J. Liegal.)

versation about production and morale in the department being down to a bad low?

A. He didn't say anything to me about that.

Q. What did he say to you? [484]

A. He just talked about, mostly about working for Germans. The whole thing he was so darned excited I couldn't make out what the devil he was trying to get at.

Q. How long did he talk to you?

A. Wasn't much more than five minutes between the two points. In fact I was only in the picture about five or six minutes all told and I tried to quiet him down and tried to get at the bottom of it to try to find out what it was all about, but I found out in an around about way that this fellow was being discharged and he didn't like the idea of the police coming in and taking him out, but I figured that was the company's right and we had orders to do that and we were obeying orders.

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Thank you, Mr. Liegal.

(Witness excused.)

Mr. Riggs: I have one more witness with reference to the Williamson matter. In the meantime I will go ahead with the Fisher case.

Trial Examiner Hektoen: Very well.

Mr. Riggs: Call Mr. Mohr.

ROBERT B. MOHR,

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows: [485]

Direct Examination

By Mr. Riggs:

Q. What is your full name and address?

A. Robert B. Mohr, 4437 Cleveland.

Q. Are you employed by Consolidated and if so, in what capacity?

A. I am employed by the Consolidated at the present time as assistant foreman in department 69.

Q. Is that the wing department at plant 2?

A. Yes, sir; wing department.

Q. What was your employment in November 1940?

A. 1940? A leadman in the wing department—in charge of the bulkhead assembly.

Q. Who was your foreman?

A. Mr. Powell.

Q. Who was your foreman in November 1940?

A. 1940?

Q. Mr. Mineah?

A. No, Mr. Mineah wasn't the foreman then; November 1940. It was Mr. Powell or Ezart.

The Reporter: Will you spell that, please?

The Witness: E-z-a-r-t.

Mr. Powell was promoted after Mr. Ezart and I don't know when the dates were.

Q. Do you know Mr. A. J. Fisher?

A. Yes, sir. [486]

(Testimony of Robert B. Mohr.)

Q. When did you first meet Mr. Fisher?

A. I don't remember the date that I first met Mr. Fisher before he worked for me. It was somewhere, I think, in 1939, or 1938—1938 or 1939.

Mr. Ryan: Talk louder; we can't hear you.

Mr. Riggs: Will you keep your voice up?

The Witness: When I first met Mr. Fisher before he worked under my supervision, I think it was in 1938.

Q. (By Mr. Riggs): When did he first work under your supervision?

A. Under my supervision? Either the last part of 1939 or the first of 1940.

Q. Well, do you remember having a talk with Mr. John B. Waskey about Mr. Fisher?

A. Yes, sir.

Q. Will you repeat that talk that you had with Mr. Waskey?

A. Mr. Waskey came to me. He said:

"I have a man I am going to send up to you—Fisher."

He says: "I have had him on spars but he talks a little too much and he keeps everybody from working, so I am going to send him up to you to see what you can do with him."

So I said: "All right."

So Mr. Waskey sent Fisher up in the bulkhead department under my supervision. [487]

Q. Do you know whether Mr. Fisher had been discharged and rehired at that time?

A. Mr. Waskey told me, I think, that Fisher

(Testimony of Robert B. Mohr.)

had worked in the sheet metal department and had been discharged and he had been given a job back again under the condition that Mr. Waskey would keep Fisher under his supervision and see that the company got, or see that he kept out of trouble and the company got their 8 hours work out of him, or whatever his tour of duty consisted of.

Q. Was Mr. Fisher—did he have any connection with the union at that time, if you know?

A. He had what?

Q. Any connection with the union at that time.

A. With the union?

Q. Yes.

A. I think he was a member of the union at that time.

Q. Was he a shop committeeman or an official?

A. No, he wasn't a shop committeeman. Mr. Fisher wasn't a shop steward when he first came to me. When he came to me Mr. Perry was the shop steward but Mr. Perry, I think, was elected to treasurer or financial secretary and then Mr. Fisher was elected shop steward.

Q. Well, was he a shop steward while he was in your department? A. Yes, sir.

Q. Now, can you tell us anything—tell us whether at any [488] time Mr. Fisher left his department?

A. You mean on union business? Yes, sir.

Q. Can you tell us any circumstances of his

(Testimony of Robert B. Mohr.)

leaving, whether he left with your permission or without your permission?

A. I was working in No. 4 building of No. 1 plant and I missed Fisher one morning, so I looked around and I couldn't find him nowhere about the department. I asked several of the boys if they had saw him and they said that he had gone some place about the union. So I waited until he come back. The time that elapsed, I guess, was between two and three hours. So I happened to be sitting at my desk. It was right at the step where he had to come up and I called him over and said, "Where have you been?" "I have been over to see Mr. Powell and Mr. Kelly," he says. I says, "Don't you think before you leave the department you should let me know so I know whether I have got to have somebody else fill in your job or not?" He said, "I don't have to do that." He said, "Mr. Powell knew I had to go away from here."

I said, "Mr. Powell or no Mr. Powell, hereafter don't leave this department unless you let me know that you are going to leave." He said, "I was on union business." I said, "That doesn't make a bit of difference, if you are on union business, all you have got to do is to tell me you [489] have got to go to Mr. Kelly's office and it is all right. Then I will know you are gone. Otherwise I don't know where you are at, or what you are doing. I don't know whether you are on union business, or whether you are just roaming around somewhere."

(Testimony of Robert B. Mohr.)

So he kind of resented it and I went down to see Mr. Powell.

Q. Wait a minute. What did he say?

A. Pardon me?

Q. What did he say? Did he threaten to report you to anybody?

A. He said he didn't have to report to me. He said Mr. Powell knew he was gone and that let it out, so I went down and asked Mr. Powell and Mr. Powell told me that Fisher positively must report to any lead man that he works for, otherwise the lead man don't know what his department is doing or what his men are doing.

Q. Were there any other occasions on which you had any talk with Fisher about his leaving the department with or without permission?

A. Well, there were several times, but that was an outstanding one, because he was gone so long.

After that Mr. Powell called him and told him that he positively had to tell the lead man.

Trial Examiner Hektoen: Were you there when he said [490] that?

The Witness: Yes, sir. Mr. Powell came up into the department.

Q. (By Mr. Riggs): That is Mr. Steve Powell that you are speaking of, isn't it?

A. Pardon me?

Q. Is that Mr. Steve Powell you are talking about?

A. Steve Powell, that is right, he was foreman of the wing department at that time.

(Testimony of Robert B. Mohr.)

Q. What did Mr. Powell tell Mr. Fisher in your presence again?

A. He told Mr. Fisher that in the future if he had to leave the department for any business whatsoever, he must come and inform his lead man regardless if it was me or who it was, and Fisher nodded his head, acknowledging that was what he would do in the future.

Q. Did Mr. Powell say that he should secure the permission of the lead man?

A. That he had to come and inform the lead man and get permission before he could leave the department.

Q. What have you got to say with reference to Mr. Fisher's contact with other men in the department?

A. Well, when Fisher was first elected shop steward one of the men came to me—this man didn't get a raise, so I says, "Well, Ed, I will go down and talk to Mr. Powell about [491] it because I think you deserve one." So I went down and I talked it over with Mr. Powell. Anyhow the result was the man didn't get the raise. So I told Mr. Thomas, that was Ed Thomas, at that time one of the mechanics working for me, "Why don't you go down and see Powell?" "Oh, never mind," he says, "I will forget all about it."

Then Fisher got elected shop steward. Ed Thomas asked—said to me, "I am going to get a raise." I said, "Good, did you go down and see Mr. Powell?" "No," he said, "Fisher came down

(Testimony of Robert B. Mohr.)

and called me and told me that he was going to take the case up."

I said, "Did you present him with a grievance or anything?" "No," he said, "I was going to drop it altogether but Fisher said he will get me a raise—he said so." "Good luck to him," I said, "If you get a raise because I think you really deserve one."

But several other men had told me that they were going to let their cases drop but said that Fisher approached them about getting a raise, so I decided that that was wasting too much time. I asked the men if he approached them during working hours and they said "Yes," and I went to him and I said, "Fisher, why don't you do this job right? If they have got a grievance, take it up for them and if you have business you want to talk to them about for the union, you shouldn't do so on working hours. Don't do it," I said, [492] "Because you, in your position now, are going to be outstanding above the other men; they are going to look forward to you—what you are doing, and it is up to you to set an example for them and not go around and agitate these things."

He said that if that is the attitude I was taking toward it, "I will take you to Mr. Kelly," he says, "I think you and Jack Waskey are just trying to get me, or something like that." "No," I said, "nobody is trying to get you, Fisher." I said, "What happened before you came to work for me means nothing; what you do from now on, or the

(Testimony of Robert B. Mohr.)

day you came here, that means something to me.”

So I told him that whenever he wanted to take me to Mr. Kelly that was up to him or any grievance he had against me he should present it to Mr. Kelly and it would be all right with me. And I went to my supervisor, Mr. Waskey at that time, and I informed him of exactly what Fisher had told me—that Waskey and I had been gunning after him and I will assure you I never went out of my way to do that man any harm.

Q. Did any men in your department complain to you at any time that Fisher was bothering them as to how they should do their work?

A. That was in No. 4 building. Several of the men that worked for me came to me and wanted to know who was boss or was the lead man in the department—Fisher or I. And I [493] told them that I was and asked them what was the matter. They said, “Well, Fisher is coming down and telling us how we should do our work”—they shouldn’t do this or they can’t do that and things like that, so I again went to Fisher and talked to him.

I said, “Now, Art, you can’t do those things. I am the boss of the department and if those men aren’t doing the work right I will take care of it, and I will instruct them how they should do it. Just leave them alone.”

So he didn’t like the idea of my telling him that but anyhow I think he left them alone because I didn’t have much more trouble on that score after that.

(Testimony of Robert B. Mohr.)

Q. Did Fisher eventually leave your department?

A. Fisher eventually left my department, at my *request of* Mr. Waskey and Mr. Powell.

Q. When did he leave?

A. Pardon me?

Q. When did he leave?

A. Well, I couldn't remember the date, but I went to Mr. Waskey and told him that he had to move Fisher after this here incident that I just mentioned to you, about telling the boys what to do and what not to do, because it was causing unrest. The boys, they didn't know who to listen to or anything else, so I told Mr. Waskey that he positively had to move Fisher out of the department because I couldn't [494] get along with him and my men were dissatisfied and they were losing respect for me because they thought I was letting Fisher get away with something.

Mr. Ryan: I object to that as a conclusion of the witness, unless he names the particular men he talked to.

Trial Examiner Hektoen: It is all volunteered, anyhow. We are still trying to get the date when he left your department.

The Witness: Well, I couldn't tell the date.

Trial Examiner Hektoen: All right, if you can't, then I wish you would stop and not go on.

The Witness: I couldn't tell the date because I don't keep the date every time a man changes. [495]

Q. Did he eventually leave your department?

(Testimony of Robert B. Mohr.)

A. He eventually was sent to the spar department under the supervision of another lead man.

Mr. Riggs: That is all.

Cross Examination

By Mr. Harrington:

Q. At this time that you missed Fisher, you stated you missed him one morning and was told he was gone on union business?

A. Pardon me?

Q. One morning when you missed Fisher you heard he was gone on union business?

A. On union business, yes.

Q. At that time, what was your position?

A. Lead man.

Q. What was Powell's position?

A. Mr. Powell was foreman of the wing department at that time.

Q. Where had you been just prior to the time you missed Fisher ?

A. Well, the department under my supervision ran about half of the mezzanine of the building I was in, which may have been, I guess, six or seven hundred feet, and I may have been at the other end of my department and supervising the other part, and walked down. That is when I missed him.

Q. You don't know how long he had been missing? [496]

A. He had been gone before I missed him, I don't know, but from the time I missed him up until he

(Testimony of Robert B. Mohr.)

came back was a period of two or three hours that had gone.

Q. You testified, I believe, that Thomas was the name of the man who didn't get a raise?

A. Mr. Thomas.

Q. You testified Thomas told you Fisher told him he was going to get a raise? A. That is right.

Q. Is it your understanding of Fisher's union position that he had to wait until somebody came up to him before he could act as a union committeeman?

A. My understanding is that a shop steward should be presented with a grievance by the man that has the grievance, and when he has that grievance—first, the man that has the grievance should come up to either the lead man or the assistant foreman, or foremen, and present the grievance, talk it over, and see if it can be straightened out. Then, if they can't come to an agreement with those people, then he takes it to the shop steward; then the shop steward presents his grievance to the foreman of the department, the way I understand.

Then, if there is disagreement then, it is carried, step by step, up, until it gets to the superintendent of the workers, the management, or as high as it may go. [497]

Q. Is it your understanding if the union shop steward sees something in the department he feels is wrong, it isn't in accordance with union agreement, you understand he can't do anything about that unless a grievance is presented to him?

A. No. If a shop steward sees anything in the de-

(Testimony of Robert B. Mohr.)

partment that wasn't right, he should come to the head of the department and talk it over with him to try to straighten it out.

Q. In Thomas' case, who was the head of the department at that time? Powell?

A. I was. The bulkhead department that Mr. Fisher and Thomas work in?

Q. Yes.

A. I was head of the department, lead man of the department.

Q. Did you have anything to do with wages?

A. No, but Mr. Thomas talked it over with me, and I went down to Mr. Powell and seen him, as lead man; but after that, I didn't hear any more about that case until Mr. Thomas came and told me, and I asked him, I says: "Did you go down to see Mr. Powell? I think it might be straightened out."

He says, "I forgot all about it. Fisher told me he was going to take it up."

I told Fisher, "If you got any of those things, come to me, or somebody else, before you start upsetting these men, because these men appear to be satisfied." [498]

Q. When was this? When did this incident occur?

A. Right after Fisher was elected shop steward. You people remember when Fisher was first elected shop steward. I don't know the date of it.

Mr. Harrington: I have no further questions.

Redirect Examination

Q. (By Mr. Riggs) What do you say as to the character of Mr. Fisher's workmanship?

(Testimony of Robert B. Mohr.)

A. Pardon me?

Mr. Riggs: Read the question.

(The question was read.)

Q. (By Mr. Riggs) While he was under your control, from your observation.

A. Mr. Fisher's character as an employee was one that——

Trial Examiner Hektoen: That isn't quite what we want. How was his workmanship?

The Witness: That he was always dissatisfied.

Trial Examiner Hektoen: Well, how was his workmanship?

A The workmanship that he done was about the average, when he did it, if you let him have his own way. But, for instance, Mr. Fisher had a job, one day, assigned, that I considered was important, and the part we found was too long——

Mr. Ryan: I am going to object to this unless he tells when it happened or whether anybody was around. We can't defend against this kind of testimony. [499]

The Witness: Yes, sir. I will tell you when it happened.

Trial Examiner Hektoen: Just a minute. Let us get back to dialogue examination.

Mr. Riggs: Read the last part of his answer.

(The record was read.)

Q. (By Mr. Riggs) Can you give the Examiner any specific instances, mentioning the time and place, if you can, when Mr. Fisher's workmanship did not

(Testimony of Robert B. Mohr.)

come up to what you considered to be the right kind?

A. This case was in the home plant, Building No. 4, maybe February of 1941. The part I found was too long. Instead of bringing it to me or having the part corrected, he cut it off, cut off a stop of the wood assembly picture, in order that the part would fit in, and that part controlled, or was one of the parts of assembly that controlled the landing gear of a B-24 bomber.

And the stop that he cut off I took to Mr. Waskey and showed it to him, that the part had been cut off, and Mr. Waskey himself came up and talked to Fisher about removing that part.

Q. Do you recall any other incidents?

A. On another incident, maybe about a month, or some time about that time, it was still over in the home plant, the inspector came to me and said, "Bob, these drag braces Fisher [500] is working on I won't take."

So, I went and looked at them. They weren't in line, and they had to be reworked.

Q. What is a drag brace?

A. A drag brace is a triangular-shaped little assembly that is put on to brace a spar, an auxiliary spar, onto the upper surface and lower surface of the wing in the bulkhead.

Q. What is a spar?

A. A spar is a part that runs, connects the bulkheads, or ties the bulkheads into the wing; the bulkhead is what we call—what we call a bulkhead—in

(Testimony of Robert B. Mohr.)

other words, is what the average persons calls ribs in the wing.

Q. Going back to the drag brace, continue about the drag brace, as you started to talk about it.

A. That is right. I asked Fisher why he did the drag braces that way, and he said it was not wrong. I said, "It is wrong. I can't ask the inspectors to take it."

He said, "They got a right to take it."

I had been supervising the job a year or two, and I had worked on the B-24 bombers, and I knew how they should be built, and I should know whether they were right or wrong. The inspector told me he couldn't pass it. And we had to rework them, and I told him I didn't want that done that way in the future. We had to rework the drag braces.

Q. Was there any other occasions when you found his work [501] unsatisfactory?

A. No more than the average man, but they were just too outstanding things, because everybody makes mistakes, and you have good work and bad work at different times.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) When did your department move from Building No. 3 to Building No. 4?

A. Building No. 2 to Building No. 4?

Q. Yes, from Building No. 2 to Building No. 4.

A. That is right.

Q. When was that moved?

(Testimony of Robert B. Mohr.)

A. We will say around the last part of '40 or the first of '41, somewhere in between that, at the end of the year, or the beginning of the year; it may have been from November to January, or somewhere in that. I just can't remember dates.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: That is all.

(Witness excused.)

Trial Examiner Hektoen: We will take a five-minute recess.

(Short recess.)

Trial Examiner Hektoen: We will be in order, please.

Mr. Harrington: Will you mark these for identification? [502]

(The document referred to was marked as Board's Exhibit No. 25 for identification.)

Mr. Harrington: By common consent of counsel for Consolidated Aircraft Company and for the Board, we introduce this memorandum to all employees, from I. M. Laddon, dated March 9, 1942, as Board's Exhibit 25.

Trial Examiner Hektoen: It will be received.

(Thereupon the said document heretofore marked for identification Board's Exhibit No. 25 was received in evidence.)

BOARD'S EXHIBIT No. 25

Consolidated Aircraft Corporation

San Diego, California

9 March 1942

Memo to: All Employees

Subject: Change in Working Hours—Plant #1

Effective Saturday, 14 March 1942, the regular working schedule will be changed to the following:

Monday through Saturday — Factory Productive

First Shift

7:00 A.M. to 11:00 A.M. 11:30 A.M. to 3:30 P.M.

Second Shift

4:30 P.M. to 8:30 P.M. 9:00 P.M. to 1:00 A.M.

Third Shift

In all Departments required for third shift operations the hours will be as follows:

12:00 M. to 4:00 A.M. 4:30 A.M. to 7:00 A.M.

Monday through Saturday — Office

First Shift

7:00 A.M. to 11:00 A.M. 12:00 N. to 4:00 P.M.

Second Shift

4:30 P.M. to 8:30 P.M. 9:00 P.M. to 1:00 A.M.

Third Shift

12:00 M. to 4:00 A.M. 4:30 A.M. to 7:00 A.M.

Departments that are required to work the third shift will work six and one-half ($6\frac{1}{2}$) hours and be paid for eight (8)

I. M. LADDON

Executive Vice President and
General Manager

Mr. Riggs: Mr. Ewart.

FRED EWART

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Give your name and address.

A. Fred Ewart, 4516 Estes Street.

Q. Are you employed by Consolidated?

A. Yes, sir.

Q. Were you so employed in April, 1942?

A. Yes, sir.

Q. At that time was there a man named Walter Brown working under you? A. Yes, sir. [503]

Q. In April of 1942 at any time did you ask him to do any particular job of work? A. Yes.

Q. Will you state what that was?

A. It was a rework on a spot bracing fixture which had to be done immediately, something was wrong with it, and it had to be straightened out immediately.

Q. Was it a rush job? A. Yes.

Q. Can you fix the date?

A. No, I couldn't. I couldn't fix the date.

Q. Can you fix the month?

A. It's approximately five or six months ago; probably five months.

Q. Do you remember the time when he was discharged? A. Yes.

Q. Was it before that?

A. It was—before what?

(Testimony of Fred Ewart.)

Q. Was it before his discharge?

A. What do you mean: Was it before his discharge?

Q. How many days before his discharge was it, or how many weeks, if you remember?

A. I don't know what your are driving at. Before what?

Q. Do you remember the date when he was discharged?

A. No, I don't. I don't remember the date. [504]

Q. When you asked him to do——

A. I believe it was the day after the incident, after the trouble I had with him.

Q. When you asked him to do this job, what did he say?

A. Well, he said: "I don't want to work for you. I don't like you. You got an accent, and I don't like you." That is all he said.

Q. Did he say anything about you being a German?

A. No, I don't think so. I didn't hear that.

Q. Are you German-born?

A. German-born, yes.

Q. Are you an American citizen? A. Yes.

Q. Were you born in this country?

A. No, I was born in Germany.

Q. When did you come to this country?

A. In 1925.

Q. How old were you? A. 19.

Q. Have you been here ever since?

A. Yes.

(Testimony of Fred Ewart.)

Q. Have you ever belonged to any German organization, such as the bund, or any other German organization? A. No.

Q. Did you report this incident to Mr. Hangen?
[505]

A. Yes.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) Mr. Ewart, did Brown work for you or did he work for a man named Dobbs?

A. He worked fore me, Dobbs also worked for me.

Q. How do you pronounce that, Dobbs, D-o-b-b-s?

A. Dobbs, D-o-b-b-s.

Q. Was Brown working for Dobbs? What was Dobbs' position?

A. Dobbs was one of the—well, in our gang we have a man that takes the lead in a certain job. He is assigned to a certain job and I give him two or three men with him. Dobbs was one of these men.

Q. Dobbs was a lead man?

A. Not a lead man. He was something like, sort of a group leader.

Q. Were you the lead man or foreman?

A. No, I was a lead man.

Q. And Dobbs was under you? A. Yes.

Q. And Brown was under Dobbs? Is that the idea?

Q. Brown at that particular time was assigned to Dobbs, yes.

(Testimony of Fred Ewart.)

Q. And was he being transferred immediately under you? Is that what he objected to? [506]

A. No. Another job came and I had to transfer some other men to this particular one, and I took one away from Dobbs, because he could spare one man.

Q. Brown was the man you took? A. Yes.

Q. Who would he be under in the new job?

A. Under me.

Q. He would be directly under you rather than working under Dobbs? A. Yes.

Mr. Harrington: I see. I have no further questions.

Redirect Examination

Q. (By Mr. Riggs) Dobbs was under you too, wasn't he? A. Yes.

Q. When you sent three or four men to a certain job you appointed somebody as sort of a squad leader?

A. Yes. We generally do that because we have too many different jobs.

Q. So when you asked Brown to do something directly for you, you weren't transferring in any way from one department to another, or anything like that?

A. No. It was just a short job and we needed it. It had to be done.

Q. It had to be done in a hurry? A. Yes.

[507]

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything more?

(Testimony of Fred Ewart.)

Mr. Harrington: No further questions.

Trial Examiner Hektoen: That is all. Thank you, Mr. Ewart.

(Witness excused.)

Mr. Riggs: Mr. Waskey.

JOHN B. WASKEY

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your full name and address, please?

A. John B. Waskey, 715 2nd Avenue, Chula Vista, California.

Q. Are you employed by Consolidated, and if so, in what capacity?

A. I am employed by Consolidated as general foreman of Department 38.

Q. What department is that?

A. That is the PB2-Y3 final assembly in plant No. 1.

Q. What was your position with Consolidated in July, 1940?

A. In July of 1940 I was supervisor of the wing department.

Q. At that time were you connected with Aircraft Lodge No. 1125? A. Yes, I was. [508]

(Testimony of John B. Waskey.)

Q. What was your position, if any?

A. I was president of Aircraft Lodge at that time.

Q. Did you have any other position?

A. I was also chairman of the shop committee.

Q. As chairman of the shop committee, how far did your jurisdiction extend at that time?

A. Well, at that time Consolidated was smaller, and the union was smaller, and the shop committee used to handle all the business, because we couldn't afford any business agents, so the shop committee did all the negotiating with the management.

Q. Now, do you recall the time that Arthur Fisher was discharged?

A. Yes, sir. [509]

Q. Where had he been working?

A. Fisher had been working in the sheet metal department at that time.

Q. Did you have anything to do with his discharge or know anything about it until after it happened?

A. The first thing I knew of Fisher's discharge was when the subject came up in the union meeting the week after the discharge occurred.

Q. Were you delegated to do anything about it?

A. The matter was referred to the shop committee to be handled, to see if we could have him reinstated, and I asked the management to set a date for a meeting to discuss his reinstatement.

Q. Was such a meeting held?

A. Yes. The meeting was held in Mr. Kelly's office. He handled the labor relations at that time.

(Testimony of John B. Waskey.)

Q. Who was present if you recall?

A. I believe Mr. Kelly and Mr. Frye for the company and Mr. Joe Brown was present and Mr. C. L. Bently, International Representative of Machinists and myself and Mr. Fisher, I believe, was there also.

Q. At that time were the reasons for the discharge of Mr. Fisher discussed?

A. Yes, sir, they were.

Q. What was stated in that regard and by whom, if you recall? [510]

A. The record of discharge was read, the termination sheet. I don't recall exactly what it said. I believe the substance of it was that Mr. Fisher was discharged for incompetence—wasn't able to handle the job.

In Mr. Kelly's statement of the case he brought up the fact that Mr. Fisher had been employed in the sheet department originally to operate punch presses. He was supposed to be an expert on die-setting and operating punch presses and he had been unable to get along with the leadman in that department and hadn't given satisfaction there, so he had been transferred to some other department—transferred to some other section of the department. He hadn't been satisfactory there and they discharged him.

Mr. Kelly, as I recall it, brought in a bag full of parts that had been run on a punch press, a joggling job, and asked Fisher if he had done this job. Mr. Fisher said, "No" he hadn't done the job.

Mr. Kelly produced the traveler for the job and showed Mr. Fisher his name on it and then he brought

(Testimony of John B. Waskey.)

out the point that the parts were all ruined; that they had all been cracked. I don't know how many there were now. I imagine between 20 and 30 parts.

The principal discussion as to whether or not the discharge was justified hinged around that bag of parts.

Q. Was there a man named Raymond there? [511]

A. No, I don't believe Mr. Raymond was there.

Q. Was there anything said about Mr. Fisher telling people in his department how to do their jobs—interfering with their work?

A. I don't recall whether that was mentioned.

Q. Well, what happened as the result of the conference?

A. Mr. Kelly said that he would not rehire Mr. Fisher at that time, and as I recall it I told him that the case was very important to the union and we felt that Mr. Fisher had been discharged in an unorthodox *matter* and wanted him to further consider the case.

He said he would see me in a day or so. We adjourned at that time the formal hearing in the case.

Q. Well, what happened next?

A. About two days later Mr. Kelly came out where I was working in the shop and we talked about the case again at some length and I told him that the case was causing considerable difficulty in the union and it was a very difficult case to handle; whereas I wasn't going to present the matter of Fisher being unjustly discharged I would appreciate it if he would reconsider it and hire the man

(Testimony of John B. Waskey.)

just in order to make the situation a little better for the union.

After about ten minutes discussion he said:

“Okay, I will hire him and you will have to take care of him.” [512]

Q. What did you say to that?

A. I said: “All right, put him out here on the job and I will try to take care of him.”

Q. What did you mean, that you would try to take care of him?

A. Well, I meant that I would try to teach him the job and keep him on it and make a satisfactory workman out of him.

Q. Well, did you put Mr. Fisher after that on assembling landing gear drive trusses?

A. Well, he had been under my supervision for sometime before he got to that point. I had him on several other jobs first.

Q. Did you find him satisfactory on those other jobs?

A. No, sir, I did not.

Q. Why not?

A. Well, Mr. Fisher is a very difficult man to work with. I put him first on the PBY spars, a job that I thought he could handle very nicely, which consisted mainly of drilling holes.

After about two weeks on that he complained to me that he was a mechanic; he wanted more difficult work. I told him:

“Okay, Art, I will put you on a job and I will see if you are a mechanic.”

(Testimony of John B. Waskey.)

I put him on the installation of gas tank corners on these same spars, which is a fairly difficult job. It [513] requires careful workmanship.

I will say I had him on that for about a month. I came to the conclusion he couldn't do it, so then I put him in the bulkhead group under Mr. Mohr, and I told Mr. Mohr that I didn't think the man was a mechanic; that he was a difficult man to have in the department because he didn't get along with people. I told him to take his fixtures for what we called the drag links and drag trusses—two small fixtures and put them off in the end of the department and put Fisher up there where he would be working by himself on this assembly job.

That, I figured, he could do and that is where we put him. That was in Building 2.

Q. Did you put him working by himself so he could not interfere and gossip with other workers?

A. That is right. That was the principal reason for putting him by himself, so he would have no excuse to be bothering anybody else.

Q. Had he been bothering other workmen?

A. Well, I wouldn't say that he bothered them, but he kept them from their work by continually talking to them. He is a man that likes to talk.

Q. When you asked Mr. Mohr to take him in his outfit, did you tell him that you had gotten Fisher back upon your promise that you would look after him and try to see that he became a good workman? [514]

(Testimony of John B. Waskey.)

A. No, sir, I don't believe I made that statement.

Q. Do you remember what you did say?

A. As I recall it I told Mohr that this fellow was unsatisfactory on the spars and that he was hard to get along with and I wanted him put on this job where he would be by himself and I wanted Mohr to keep him working.

Q. Did Mr. Mohr ever come to you thereafter about Fisher?

A. Yes. Mr. Mohr came to me several times about Mr. Fisher. The first time was because Fisher wandered away from the job and Mohr and I talked with Fisher a number of times about that to impress on him that he had to stay on the job.

Then later, after the first of the year, when Fisher became shop committeeman, Mohr came to me quite a few times to the effect that Fisher was letting his committeeman's duties interfere with his work.

We talked to Fisher about that too several times.

Q. Can you give the substance of those conversations?

A. I think the substance was usually along the line that I knew what a committeeman's duties were, having been one, and Fisher knew what they were and I expected him to handle them in that way.

Q. Well, in what way do you mean?

A. Well, I expected him to let the employee with a grievance bring it to him rather than to go out and hunt up the grievances, and I expected Fisher

(Testimony of John B. Waskey.)

to stay on the job with the exception [515] of, perhaps, two or three instances, whenever Fisher left the department he would contact me and get permission to leave.

Q. Were there occasions when he left the department without contacting you to your knowledge?

A. Yes; there was one occasion when Fisher took a notion to go down to Jim Kelly's office and present him with an idea for a revolutionary clamp that would hold work in place.

I did not hear about that until the next day when Mr. Kelly came out and asked me why I let people bother him with that kind of stuff.

Q. Was there anything in the idea?

A. The idea was very poor.

Mr. Ryan: I object to that as a conclusion of the witness.

Trial Examiner Hektoen: Of course it is a conclusion.

Mr. Riggs: How can it help being a conclusion.

Trial Examiner Hektoen: I can't see.

Mr. Riggs: You are familiar with the work that Mr. Fisher suggested he could do or, you are familiar with the device that he suggested the company adopt?

The Witness: Yes, sir.

Q. (By Mr. Riggs): And you had been at that work for several years?

A. Yes, sir. [516]

(Testimony of John B. Waskey.)

Q. And in your opinion was this suggestion worth anything to the company?

A. No, sir. I think if I had been in Mr. Kelly's position I would have discharged him for wasting the company's time in making that kind of stuff.

Mr. Ryan: I object to the question and ask the answer be stricken from the record. It is immaterial and irrelevant and calls for an opinion and it is of no value in this case.

Trial Examiner Hektoen: I think it is rather valuable; it may stand.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) Mr. Waskey, at this conference that was held after Fisher was discharged in 1940, you said that the reason given for his discharge was that he couldn't get along with the leadmen in the punch press?

A. No, that was the reason for his being transferred to another group.

Q. He had been transferred from the punch press department to another group? A. Yes, sir.

Q. How long was that before his discharge?

A. I couldn't say accurately. My impression would be that it was probably a week or ten days before.

Q. A week or ten days before his discharge? [517]

A. (No answer)

Q. Were you present at a union meeting around July or June 1940, at which Mohr proposed a motion that men work 40 hours a week before they receive overtime?

(Testimony of John B. Waskey.)

I believe Walter Borg introduced that motion. I meant to say "Borg" instead of "Mohr"?

A. What is that date? 1940?

Q. Yes; I believe that is when it was.

A. I was surely present at the meeting then.

Q. You were?

A. (No answer)

Q. And at that meeting didn't you support Borg's motion?

A. No; I never supported such a motion.

Q. Did you make any statement regarding that motion?

A. I don't remember that motion, but I do remember that subject because it came up many times and I always opposed it.

Q. You opposed it? A. Yes, sir.

Q. Did you take any action in regard to it, or what did you do in opposing it?

A. Well, I spoke in opposition to the motion.

Q. When did you speak in opposition to it?

A. Well, as to the date I can't give you it, but that came up at a good many meetings.

Q. Did Fisher speak with respect to that motion?

[518]

A. I can't recall the particular motion that you are referring to because I don't remember it specifically—the one made by Walter Borg.

Any motion that came up in the Union Hall Fisher spoke on if he was there.

Q. Well, do you recall the motion made with respect to this 40-hour week?

(Testimony of John B. Waskey.)

A. I recall a number of motions on the subject but I don't recall one being made by Walter Borg.

Q. Do you recall one that was read off of a sheet of paper—on Consolidated stationery?

A. No, sir.

Q. What were Fisher's union duties that you said were interfering with his job?

A. Fisher was newly elected shop steward at that time.

Q. What duties was he engaged in that were interfering with his job?

A. Well, Mr. Mohr felt that Fisher left his work unnecessarily to contact various people around the department in an effort to find out if these people had any complaints or grievances to make.

Q. Did you work in the same department as Mohr did?

A. Yes. Mr. Mohr was a leadman in the section of the department that I was supervisor in.

Q. That was the wing department, was it not?
[519]

A. Yes, that was the wing department.

Q. And was that department moved from building 2 to building No. 4?

A. It was, yes.

Q. When was that moved?

A. As I recall it, I think that would have been in the spring of the year—about April.

Q. Of what year?

A. 1940, I believe.

Q. April 1940?

A. No, that would be April 1941.

(Testimony of John B. Waskey.)

Q. April 1941? A. Yes; 1941.

Mr. Harrington: We have no further questions.

Mr. Riggs: That is all I have.

Trial Examiner Hektoen: Just a second, Mr. Waskey. I would like to get a little bit more of your history at the plant. You are now a foreman?

The Witness: That is correct.

Trial Examiner Hektoen: When did you become a foreman?

The Witness: I became assistant foreman in June of 1941.

Trial Examiner Hektoen: And when did you become a full foreman, or when did you get your present title?

The Witness: General foreman?

Trial Examiner Hektoen: Yes. [520]

The Witness: Let me see, February of this year.

Trial Examiner Hektoen: I take it that you are no longer connected with the Union?

The Witness: That is correct. I took a withdrawal card.

Trial Examiner Hektoen: When did you cease your connection?

The Witness: I believe the card is dated February of this year.

Trial Examiner Hektoen: Well, were you active in the Union during the time you were assistant foreman?

The Witness: During the time I was assistant

(Testimony of John B. Waskey.)

foreman I attended an occasional meeting. I was not active.

Trial Examiner Hektoen: You did not take your usual active part?

The Witness: No, sir.

Trial Examiner Hektoen: That is all. Is there anything more ?

Mr. Riggs: That is all.

Mr. Harrington: That is all.

Trial Examiner Hektoen: Thank you, Mr. Waskey.

(Witness excused.)

Mr. Riggs: William Larson.

WILLIAM T. LARSON

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows: [521]

Direct Examination

Q. (By Mr. Riggs) Please state your name?

A. William T. Larson.

Q. Are you employed by the Consolidated Aircraft Corporation and if so, what is your employment?

A. Department 38, leadman. Primary assembly—department 38, leadman.

Q. And where is department 38 situated?

A. Building 2, Home plant.

(Testimony of William T. Larson.)

Q. And who is your foreman in that department? A. Waskey.

Q. Mr. Waskey? A. Yes, sir.

Q. In the middle of 1941 where were you employed? A. In the middle?

Q. Yes.

A. I think we were in the parts plant then.

Q. Plant 2?

A. Just moving up or something—right around in there.

Q. Well, when did you first know Mr. Fisher?

A. Well, I was—I was working on a—I was working on Navy spars at the time and the first time I seen him I happened to look up and he was leaning on a spar for about 35 minutes, and I got to wondering who it was so I inquired.

Q. Was he placed under your supervision at any time? [522]

A. No; I was just a mechanic—at any time you say?

Q. Yes. A. Oh, yes, later.

Q. Well, when was that?

A. It was in—well, they give him to me from Bob Mohr. I was leadman. They give him to me—I think it was when we was in building 4. Maybe June, around June or July—June—just before we moved up to the parts plant—about a month before.

Q. Did I understand you to say that he was transferred to *your* from Mr. Mohr?

A. Yes, sir.

(Testimony of William T. Larson.)

Q. Did you have any talk with Mr. Mohr about him when he was transferred? A. No, sir.

Q. What was Mr. Fisher's job at that time?

A. When he was transferred to me?

Q. What did you put him to work at?

A. Stabilizers.

Q. What?

A. Stabilizer spars; you know what it is.

Q. No, I don't. I don't think the Examiner does. Explain a little more fully what that work means, will you, so a couple of lawyers can understand you?

A. A stabilizer spar is a longitudinal beam that carries the [523] stresses from the fuselage to the skin. In other words, it is what we put ribs in between the two spars and the skin is riveted to the ribs and that means it is transmitted to the fuselage because the whole thing fastens to the fuselage.

Q. Well, did you find Mr. Fisher a satisfactory workman at that job?

A. No, sir, did not.

Q. Why not? A. He wouldn't work.

Q. What?

A. He wouldn't work. I would have to shame him into working sometime.

Q. And was he on his job all the while or not?

A. No, sir, he was not.

Q. Did you have any talks with Mr. Fisher about this? A. Yes, sir.

(Testimony of William T. Larson.)

Q. Give us the substance of those talks, if you can?

A. Well, he would tell me he was a union committeeman and that he could run around when he felt like it—"who the heck was I anyway, to tell him what to do."

I hadn't been leadman very long and I wasn't any too darn smart, anyway, I guess.

Q. Is that what he said that you weren't any too smart?

Trial Examiner Hektoen: No, that is what the witness said about himself. [524]

The Witness: That is what I said about myself.

Q. (By Mr. Riggs) I mean you say that you were not too smart at that time anyway; is that it?

A. Yes, sir. [525]

Q. What did you tell Fisher to do?

A. Get to work.

Q. Did he follow your instructions?

A. Oh, maybe for a little bit.

Q. Tell us a little bit more about it, Mr. Larsen. I mean, did he leave his job?

A. Yes, quite frequently.

Q. How often, do you recall?

A. Well, I don't know how many times a day, or anything like that. He wasn't there any too much.

Q. How about the inspection of the work he was doing?

(Testimony of William T. Larson.)

A. After we got to the parts plant, I stuck him on a different jig. He got into his head he was going to run it a little different than the general routine, the customary standard of doing things.

Q. While he was down at the home plant, what was it he was failing to do in connection with these stabilizers?

A. Just wouldn't put out the work.

Q. Was there anything in connection with inspection about them?

A. No, he got along all right down there in inspection.

Q. Do you recall when he was working on an auxiliary spar?

A. Yes. I put him on auxiliary spars up at the parts plant, to see if I could get him some place where he wouldn't talk so much and stop people working, and it didn't do any good, [526] I guess.

Q. What happened with reference to the inspection of the auxiliary spars?

A. He got it into his head there he didn't need to have block inspection. You see, when a wood assembly fixture, where they make spars, they put the webs in, and all the details first, then the webs, and lay the rails in to form the contour itself, that is where the auxiliary spars come, from Station 6. And it requires that the different things be inspected before they are removed from the cable, to be sure they are accurate. He wouldn't do that.

(Testimony of William T. Larson.)

Q. Is that the rule of the department or the custom of the department?

A. It's right. It is standard practice.

Q. Did you say anything to him about it?

A. Yes, sir. I told him I was running the department and I would like to have him do things as I saw fit, and he didn't seem to think it was necessary, that inspection was necessary to—he was all the time complaining inspection was running him.

We always did get along with inspection fine before he started acting up.

Q. Did you ever talk with any of the men in your department about Fisher?

A. They did not like him at all. [527]

Q. What did they say?

Mr. Ryan: Unless he can tell us what they complained of, what was said, and in whose presence, we object.

Trial Examiner Hektoen: What would any person whom you can name, tell you?

The Witness: He come around antagonizing, see?

Trial Examiner Hektoen: First, tell us who said this to you.

The Witness: You see, one fellow—I'll tell you one thing. There was quite a few men coming in there, and they have all left now——

Trial Examiner Hektoen: If you can't name anybody, we do not want to hear about it.

The Witness: I cannot.

(Testimony of William T. Larson.)

Q. (By Mr. Riggs) Did you ever talk with Mr. Fisher at any time about his transfer?

A. I told him I didn't want him there.

Q. What did you do next about it?

A. I asked he be transferred.

Q. Was he transferred? A. No, sir.

Q. Did he stay in your department?

A. Yes, sir.

Q. Until when?

A. Until he was fired. [528]

Q. Did he ever come to you for permission to leave the department? A. He never did.

Q. Did he leave the department at times?

A. Yes, sir.

Q. How frequently?

A. Well, up in the parts plant he was gone quite frequently, I would say about——

Q. Can you state on the average how many times a day? How many times a week? Give us some idea of what you mean.

A. I would say a couple of times a day, once or two times a day.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) When was Fisher transferred or removed to under your supervision?

A. At the time when Bob Mohr——

Q. What time?

A. I don't know. Between, like I said before,

(Testimony of William T. Larson.)

in the middle of 1941, before we moved up to the parts plant, about a month before.

Q. How long before?

A. About a month before, a month and a half.

Q. Were you his lead man at all times up to his discharge, from that time on? [529]

A. Yes, sir. No, I beg to differ. He went over to Department 88 for a week, and they sent him back.

Q. When was that?

A. It was when that control service plant was first formed. He worked for Jack Warner one week.

Q. How long was that before his discharge?

A. I couldn't say for sure. About two or three months, I guess.

Q. About when?

A. Two or three months.

Q. Two or three months. Do you know what Fisher's rate of pay was when he was discharged?

A. I believe I do.

Q. What? A. \$1.06.

Q. \$1.06? A. Yes.

Q. What was it when he came under your supervision? A. I don't know.

Q. Had it increased during that time?

A. I don't know.

Q. What were the other men in the department getting?

A. Oh, 75, 80, around in there, mostly new men.

(Testimony of William T. Larson.)

Q. Then Fisher was one of the highest paid men in the department, was he? [530]

A. There was another, Ted Butole up there.

Q. What was he getting?

A. I don't know.

Q. Were he and Fisher two of the highest paid men in the department? A. I reckon.

Q. Were they the two highest paid men?

A. I reckon.

Q. You say that Fisher didn't spend much time at his work. Wasn't it a fact that there were union committeemen coming in to see him frequently?

A. There would be guys to come in to see him. They weren't union committeemen, standing around and talking.

Q. They were employees? A. Yes.

Q. How often did that happen?

A. About every day.

Q. Do you know about how many a day?

A. What?

Q. Do you know about how many men came in to talk each day to Fisher?

A. It averaged one day anyway.

Q. After you moved to the parts plant do you know what Fisher's union capacity was at that time?

A. He was shop committeeman. He said he was chairman of the [531] shop committeemen.

Q. And as chairman of the shop committeemen was he contacted by other committeemen, to your

(Testimony of William T. Larson.)

knowledge? Did you see other union committeemen contacting him?

A. They generally phoned him up. I was busy all day answering the phone.

Q. When they called him on the telephone did he have to go to answer the telephone? Where was it located?

A. In the middle of the mezzanine.

Q. How far from his place of work?

A. Just about five or six columns from Z-12; about seven columns, I guess; 170 feet.

Q. About 170 feet. How many men were working in the department at that time?

A. I think about 54.

Q. How many phone calls did he have a day?

A. At least one a day.

Q. How many men did you say were working in the department?

A. About 54. It would vary. We would bring in some and let them go.

Trial Examiner Hektoen: What did you say the number was?

The Witness: 54.

Trial Examiner Hektoen: How many did he say, Miss Reporter? [532]

The Reporter: 54.

Q. (By Mr. Harrington) How many men were employed in the home plant?

A. Plant No. 2?

Q. Yes. A. I don't know.

(Testimony of William T. Larson.)

Q. Can you approximate or estimate how many men were there?

A. I couldn't say. There was a thousand, anyway, thirteen or fourteen hundred.

Q. Wasn't Fisher the shop chairman for all those men?

A. I don't know. He said he was.

Q. He told you he was? A. Yes.

Mr. Harrington: No further questions.

Redirect Examination

Q. (By Mr. Riggs) How many men were under you as lead man?

A. It would vary from 17 on up to 32, some time, then one time I had 72.

Q. Were many of those men employees who had been recently hired?

A. A lot of new men, yes.

Q. Everybody back as far as October of 1941 had received a 13-cent increase and a 5-cent increase, hadn't they?

A. They would have to, yes.

Q. What? [533]

A. They would have to.

Q. You didn't mean to say that Mr. Fisher and this other man were the highest paid men in the department, did you?

A. I imagine they were.

Q. Didn't you mean the highest in that particular group?

(Testimony of William T. Larson.)

Mr. Harrington: I object to that as leading the witness.

The Witness: I beg your pardon?

Q. (By Mr. Riggs) The highest in your group?

Trial Examiner Hektoen: Just a minute. What is your objection?

Mr. Harrington: These men, he already stated, were the highest paid next to himself; now, he is trying to lead him to say something else about the men.

Trial Examiner Hektoen: It is a matter of proof. You mean in your department or group?

The Witness: In my group.

Mr. Riggs: That is all.

Recross Examination

Q. (By Mr. Harrington) No blanket increases were given this year? A. This year?

Q. Yes.

A. They were retroactive——

Q. When were they given? [534]

A. I think—you mean when were they given?

Q. Yes.

A. They were given July 9, 1941.

Q. When was the retroactive feature put into effect, on the blanket increases?

A. I believe it was retroactive July 9, wasn't it?

Q. July 9 of last year?

A. I believe so. I am not sure.

Q. Or of this year.

(Testimony of William T. Larson.)

A. It wasn't this year; it was last year.

Mr. Harrington: Last year. No further questions.

Trial Examiner Hektoen: I have no questions. That is all. Thank you.

(Witness excused.)

EDWARD L. RAYMOND

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your full name and address?

A. Edward L. Raymond, 2803 Copeman.

Q. Are you employed by Consolidated?

A. Yes, sir.

Q. When were you first employed?

A. July 19, 1929.

Q. 1929? [535] A. Yes, sir.

Q. You are one of the men that came from Buffalo to San Diego when they moved?

A. Yes, sir.

Q. What was your position in December of 1939?

A. I was lead man in the punch press department.

Q. How long had you been lead man?

A. Since 1935.

(Testimony of Edward L. Raymond.)

Q. Were you promoted in November of 1940?

A. Yes, sir.

Q. To what position? A. Supervisor.

Q. What is your present position?

A. General foreman of the sheet metal department, home plant.

Q. What?

A. General foreman of the sheet metal department, home plant.

Q. How many employees are there in that department?

A. About 800, a little over 800.

Q. Do you recall in December of 1939 Arthur J. Fisher became employed by the company?

A. Yes, sir. He started in my department when he first was hired.

Q. What was his work at that time? [536]

A. As a punch press operator.

Q. Was he directly under your supervision?

A. Directly.

Q. During his employment did you have any occasion or time to talk to Mr. Liegal about Mr. Fisher? A. On several occasions.

Q. Who was Mr. Liegal?

A. Mr. Liegal was our foreman of the sheet metal department.

Q. At that time? A. At that time.

Q. He is the man who testified here a few moments ago? A. Yes, sir.

Q. What did you say to Mr. Liegal about Mr. Fisher?

(Testimony of Edward L. Raymond.)

A. That I was very dissatisfied with the man, that I did not want him in my department.

Q. What was the basis of your complaints?

A. His workmanship, and his attitude, plus minus production.

Q. Was there anything said about his staying in the department? A. In what respect?

Q. Did you have any occasion to make a complaint about his leaving the department without your knowledge?

A. He broke a die one day, he broke a die, an expensive [537] die, and he took it upon himself to take it into the tool room to have it repaired. He did not contact me; he did not contact the foreman; and he did not even contact the foreman in the tool room. He took it directly to a man on the bench and asked that man to repair that die.

Q. What happened with reference to it?

A. In reference to it the foreman from the tool room contacted my foreman, and my foreman jumped me about it, and I didn't know a thing about it at that time. Then we found out he miscalculated somewhere or other in putting the piece in the press, and he broke the die, and he didn't want to tell me about it, or anything like that; he just took it over there.

Q. He didn't tell you about it?

A. He did not tell me about it.

Q. Were there any other occasions when he left his department?

(Testimony of Edward L. Raymond.)

A. I cannot recollect to a certain extent, but he was doing it, doing an awful lot of talking, going into the machine shop to the fellows. In other words, when he first come over, he was always talking against the union, because, the way I understand it, he had trouble back in Detroit, when he was over there. That's why he got out of there, to come to California to be away from unions.

So, at that time the union was more or less his full talk, [538] or all his sayings.

Q. Did he interfere with other men in your department in their work?

A. He had been generally talking on and off and trying to interrupt the other fellows from working, because he was the type of man that always loved to talk.

Mr. Harrington: I object to this general type of testimony. Can't we particularize as to the people and name the dates, or when the conversations occurred?

Mr. Riggs: I can't particularize any more than you did with some of your witnesses.

Q. (Mr. Riggs) Can you tell me any occasions when you saw this "love of talk" of his, that you can recall who he was talking to, or what happened?

A. I can go ahead and specify Bob Grant; his was talking to him; Howard Davis, he was talking to him; D. C. Gale. That's all I can recall just at the moment.

(Testimony of Edward L. Raymond.)

Q. Were all the men in your department at the time?

A. They were in my department at the time.

Q. Do you know what the subject of those discussions were?

A. When I found out, they were union talks.

Trial Examiner Hektoen: When you found out?

The Witness: When I found out.

Q. (By Mr. Riggs) How did you find out?

A. Because the boys came up and told me about it, he was [539] bothering them from working, and when I went to bawl them out they said: Well, that man is always coming and talking to us.

So I had to go and jump Mr. Fisher.

Q. Did you reprimand Mr. Fisher for talking on subjects outside the company's business at that time?

A. I did. I told him and told him, that I wouldn't tolerate that kind of talk around my department, and I told him the best thing is to go down to Mr. Liegal and see if he could ransfer out of my department, because I didn't want him with me.

Q. Did you ask Liegal to transfer him?

A. Yes, on numerous occasions.

Q. Did Mr. Liegal finally transfer him?

A. He finally transferred him.

Q. And since that time——

A. He transferred him to Walter Borg in the accounting department.

(Testimony of Edward L. Raymond.)

Q. Since that time you have had no contacts with Mr. Fisher?

A. I have had no contact with Mr. Fisher.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington) What was Fisher's rate of pay when he started in your department? [540]

A. I couldn't recall, but I never had access to the records in my capacity as lead man, so I couldn't say. But I could just hazard a guess.

Q. What would you guess?

A. About 60 cents an hour.

Q. How long was he in that department?

A. Approximately five months.

Q. Do you know what his rate of pay was when he left? A. No, sir.

Q. Had it increased in that time, to your knowledge? A. I couldn't say.

Q. Didn't you have anything to do with the rates of pay, or recommending increases?

A. I only recommended increases, but I had no—I could only go up to the foreman and recommend this man for an increase, but that's about all.

Q. Had you recommended Fisher for any increases? A. No, sir.

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all.

(Witness excused.)

Mr. Riggs: Mr. Liegal.

HENRY J. LIEGAL

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, resumed the stand, and [541] testified further as follows:

Direct Examination (Continued)

Trial Examiner Hektoen: You were previously sworn.

The Witness: Yes.

Q. (By Mr. Riggs) You previously testified you are the day superintendent of plant No. 2 now. Is that correct? A. At the present time.

Q. What was your position December, 1939?

A. Foreman of the sheet metal.

Q. What did you—when did you first meet Mr. Arthur Fisher?

A. I think he hired out in December, 1939.

Q. Did he come under your department and supervision at that time? A. Yes, sir.

Q. What was his position?

A. Punch press operator.

Q. Did you know him personally at that time?

A. He was hired directly at Detroit by Mr. Waterbury.

Trial Examiner Hektoen: In other words, you didn't know him personally?

The Witness: No.

Mr. Riggs: I didn't hear that.

Trial Examiner Hektoen: I asked him if he knew him personally and he said no. [542]

(Testimony of Henry J. Liegal.)

Q. (By Mr. Riggs) Yes; you didn't know him personally?

A. I didn't know him personally.

Q. When did you first come to hear anything about Mr. Fisher?

A. Well, I started getting reports from Mr. Raymond about a man walking around the department doing various things and also, we would get quite a little scrap. In other words, his job was mostly juggling extrusions.

Q. What does that mean?

A. Bronze sections, made by U. S. Aluminum, such as angles to hold half sections, which is so many of them I couldn't say.

Q. After Mr. Raymond had talked with you about Mr. Fisher's damage, were there any occasions when you talked with Mr. Fisher yourself personally?

A. I have stopped and talked with him I would say a dozen times and reprimanded him personally, myself, for both poor workmanship, and also for standing around and talking to other men when he should be on his machine.

He came to me well recommended as a setup man at 75 cents an hour, and the rate of pay was 60 cents at the time, and for some reason or other, I gave him a break. In other words, I put him——

Q. Put your hand down. I can't hear you.

A. (Continuing) And let him continue on working, which [543] I shouldn't have done. But I felt

(Testimony of Henry J. Liegal.)

a fellow coming 3,000 miles from Detroit, I didn't want to fire him. So we let it go along up until Mr. Raymond demanded—he asked me so often to get rid of the man, so I finally transferred him to Mr. Borg in the accounting department, which was under my jurisdiction too. Mr. Borg had the cowl-ing department.

Q. What does the cowl-ing department do?

A. Cowling around motors. [544]

Q. And what did Mr. Borg set him to work at, if you know?

A. Mr. Borg was the lead man on manufacturing the cowl-ing.

Q. And after he had been transferred over to Mr. Borg's jurisdiction he was still in your department?

A. He was still in my department.

Q. Did you have any talks with Mr. Borg about him after he had been transferred?

A. Well, the reason for the transfer to a certain extent, was he thought he was getting insufficient money and the tops on punch presses at the time was around 75 cent for setup men, 60 or 65 cents for operators, so he came to me claiming that he wasn't getting ahead far enough and I told him just why he wasn't and that, in my opinion, I ought to discharge him but I still was going to give him another chance, and I told him, in fact I gave him a chance to pick out the department that he wanted to go in, and he suggested going into the

(Testimony of Henry J. Liegal.)

cowling department, which I went ahead—it wasn't a transfer. All I had to do was to take the man from him and send him over there, only he would be under a different lead man.

Q. Now, after he got over there——

A. He was put on making cowl rings, and I was watching him to a certain extent, because I figured I had trouble with him in the punch press department and I would just notice [545] his production.

I found out after checking up with Borg that he made three cowl rings in approximately ten days, which should have been made in about one day.

Q. He made three cowl rings in how many days?

A. About ten days.

Q. That should have been made in how many?

A. I would say I could make them in one day.

Q. Did Mr. Borg talk to you about Mr. Fisher after he got over there?

A. He did. After he was out there for awhile he came to me and complained. He says, "I don't want Fisher."

Q. After that did you personally have any talks with Mr. Fisher with reference to his work?

A. I did. I told him——

Q. What did you say and what did he say?

A. I told him that he wasn't producing sufficiently and that the amount of work that he accomplished in ten days was not more than one day's work.

(Testimony of Henry J. Liegal.)

Q. Did Mr. Borg complain to you at any time about his leaving his job while he was there?

A. Well, that was the general complaint that he had. I have gotten complaints from practically everybody. In fact, Mr. Raymond and Mr. Borg and I knew when I transferred him that eventually I would have to fire the man. [546]

Trial Examiner Hektoen: Wait a minute, just answer the question.

Mr. Riggs: Strike that out.

Trial Examiner Hektoen: Did Borg complain about it to you?

The Witness: Borg complained about it.

Trial Examiner Hektoen: All right, let it go at that.

Q. (By Mr. Riggs) What finally happened to Mr. Fisher?

A. I just told Mr. Borg that I was going to discharge him, which I done.

Q. And he was discharged on or about July 26, 1940?

A. It was around the month of July.

Q. The month of July, 1940, upon your direction? A. That is right.

Q. And what was the reason that you gave for his discharge?

A. Incompetence, I think. I am not sure. I haven't seen that record since I made it out and I wouldn't swear to it, but it was similar to that.

Mr. Riggs: That is all.

(Testimony of Henry J. Liegal.)

Cross Examination

Q. (By Mr. Harrington) When you transferred Fisher to Borg did Fisher receive more money under Borg than he had been receiving before the transfer? A. No, he did not.

Q. Did I understand you to say that Borg's department paid [547] more money than the one he had been in?

A. It would pay more money than the punch press department. It is rated a little higher. It is more skillful.

Q. But it didn't pay more to Fisher when he went in there, you say?

A. Well, he was transferred over there with not having very much experience on that type of work and we couldn't put him right in there and give him more money.

Q. Did he receive more money when he was there awhile?

A. No, he didn't last long enough for that. He didn't stay much more than ten days.

Q. When did the blanket increases—do you know anything of Fisher's increases during the time he worked for the company?

A. I don't think he got an increase from me, or any time that he was working for me.

Trial Examiner Hektoen: Off the record a minute.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

(Testimony of Henry J. Liegal.)

Q. (By Mr. Harrington) Who recommended Fisher when he came to work?

A. I think Mr. Waterbury hired him in the—in Detroit, Michigan.

Q. Who is Mr. Waterbury?

A. He is personnel manager or was at the time. [548]

Q. Of Consolidated?

A. He still is the personnel manager, I think, of Plant 1.

Trial Examiner Hektoen: Is there anything more of Mr. Liegal?

Mr. Harrison: No, I have no further questions.

Mr. Riggs: I will offer in evidence at this time the employment record of Mr. A. J. Fisher, clock number 34195, from December 18, 1939 to January 1, 1942, and ask leave to substitute a photostat copy.

Mr. Harrington: Photostat both sides.

Mr. Riggs: There is no sense in having the back side photostated. There is nothing on it. Will you please mark this, Mr. Reporter?

(The document referred to was marked as

Respondent's Exhibit 6 for identification.)

Mr. Riggs: I offer it in evidence.

Mr. Harrington: No objection.

Trial Examiner Hektoen: It is admitted without objection.

(The document heretofore marked for identification as Respondent's Exhibit No. 6 was received in evidence.)

(Testimony of Henry J. Liegal.)

RESPONDENTS' EXHIBIT No. 6

Form 189—F&S

Original—

Tool Crib—

Consolidated Aircraft Corporation
San Diego, California

TERMINATION OF EMPLOYMENT

Name Fisher, A. J. Dept. No. 69. Clock No. 34195

Position and Class Assembler 691231

Date Effective 1-1-42

Time 9:30 A.M.

While employed in this department the conduct
and services of this employee were:

	Excellent	Good	Fair
Conduct	[]	[]	[√]
Ability	[]	[]	[√]
Production	[]	[]	[√]
O. K. for Rehire	Yes [√]		
in Your Dept.	No []		
Other Type Work	Yes []		
Recommended	No []		

Signed MINIAH

Foreman Dept. 69

Signed J. W. WATERBURY

Personnel Dept.

Reason for leaving Disch.-Dissobeying Company
rules.

Tools cleared*

WM. EKDAHL

Foreman Tool Crib

*List any missing tools on back of this form.

EMPLOYMENT 1

Consolidated Aircraft Jackson Fisher
 San Diego, California Last

Address Phone

Address Phone

Address Phone

Date of Birth 7-5-02 Brown Eyes Blue

Place of Birth Northtonality American

Citizen? Yes x No Date of Entry

Date 1st Papers

Male x Female

Other Dependents W

Owns own home Room and Board

How long in this Stat SS 381-09-3936

Fraternal affiliations

Church

Work done in what D Certificate No.

Grade Sch. 7th Graduate Yes

High Sch. Graduate

Special Courses 4 Ye

College Graduate

Special Courses

Trade Sch. Graduate

Special Courses

Employer ate Why Left

Fisher Body Corp 8 hr. Came West

New No work

Respondent's Exhibit No. 6—(Continued)

EMPLOYMENT RECORD
 Consolidated Aircraft Corporation
 San Diego, Calif.

Address 3670 Keating St.		Phone 8-14-40	Address		Name Arthur Jackson Fisher			
Address		Phone	Address		First	Middle	Last	
Address		Phone	Address					Phone
Date of Birth	7-5-02	Age	37	Date when	65	1967	Height	5'11"
Place of Birth	North Braddock	State	Pa.	Country	U. S. A.		Hair	Brown
Citizen?	Yes x	No	Proof	Aff. by	father, Arthur J. Fisher, Sr.	Port of Entry	Has been recorded	Nationality
Date 1st Papers		Date 2nd Papers		Number		Where Issued	Date of Entry	Eyes
Male x	Female	Single	Married x	Widowed	Divorced	No. Dependent Children	2	Parents
Other Dependents		Wife—Gatha						
Owns own home		Rents x		Lives with Parents		Lives with other relatives		Rooms
How long in this State		2 months		In what Counties		Los Angeles		Room and Board
Fraternal affiliations								SS 381-09-3936
Church		Contract for hire made in State of Calif.		Work done in State of Calif.				
Work done in what Dist.		San Diego		Reg. with Pub. Emp. Office		In what District		Certificate No.

EDUCATIONAL HISTORY

Grade Sch.	7th	City	N. Braddock	State	Pa.	Graduate	Yes
High Sch.		City		State		Graduate	
Special Courses	4 Years Gen. Motors Foreman Training	City		State		Graduate	
College		City		State		Graduate	
Special Courses		City		State		Graduate	
Trade Sch.		City		State		Graduate	
Special Courses							

PREVIOUS EMPLOYMENT HISTORY

Employer	Address	Position	From	To	Rate	Why Left
Fisher Body Corp.	Detroit, Mich.	Die Set Layout	1928	1939	1.15 hr.	Came West
New No work						

04-17 (1940)

19-24602 CONSOLIDATED AIRCRAFT EMPLOYMENT HISTORY

Date Started	Department	Clock No	Position	Type of Work	Rate	Class	Terminated	Remarks
12-30-12-18-29	Sheet Metal	1861	Punch Press Operator	Manual	.75	432102	12-23-39	Trans. night shift
N 12-24-29	Sheet Metal	1861	Punch Press Operator	Manual	.80	432102	2-11-40	Trans. day shift
2-12-40	Sheet Metal	1861	Punch Press Operator	Manual	.75	432102	5-10-40	Clock No. change
5-11-40	Sheet Metal	8173	Punch Press Operator	Manual	.75	432102	6-7-40	Rate & class adj.
6-8-40	Sheet Metal	8173	Punch Press Operator	Manual	.78	432101	7-26-40	Laid off—unqualified
8-14-40	Wing	11242	Assembler	Manual	.78	461232	12-27-40	Clock No. chg.
12-28-40	Wing	19-24602	Assembler	Manual	.78	191232	1-31-41	Rate change
2-1-41	Wing	19-24602	Assembler	Manual	.83	191231	4-11-41	Rate Review
NCB 4-12-41	Wing	19-24602	Assembler	Manual	.88	191231	6-13-41	Labor Agreement
EDW 6-14-41	Wing	19-24602	Assembler	Manual	.93	191231	8-1-41	Transferred Parts Plant
MLSS 8-2-41	Wing	69-4096	Assembler	Manual	.93	691231	8-29-41	Clock number change
DD 8-30-41	Wing	69-34195	Assembler	Manual	.93	691231	10-24-41	Labor Agreement
gls 10-25-41	Wing	69-34195	Assembler	Manual	1.06	691231	1-1-42	Disc. Disobeyed Co. Rules EB

Supervisor of Personnel

Arthur J. Fisher

 Foreman
 Employees Signature

Respondent's Exhibit No. 6—(Continued)

REMARKS

Relationship

to Employer None

Name of Relatives

Relatives in

Co. Employ? Yes

No x

Relationship

12-18-39 Finger Prints Taken
 3-25-41 Cash advance of \$50.00.
 Hospitalization of wife.
 eb 1-29-42 Quest from Civil Service, San Diego

ELIGIBILITY FOR BENEFITS

Federal Oil Age Insurance? Yes

No

Calif. Unemployment Insurance? Yes No

Ineligible for Benefits—Old Age

Unemployment

Reason

Waiting Period

Probationary Period

IN CASE OF ACCIDENT NOTIFY

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

Group Insurance Yes

Policy No. 13523 8-14-40 Amount 4000.00

BENEFICIARY Add'l \$1,000 4-30-41 2000 Total

Name Gatha Fisher

Relationship Wife

Phone

Street No. 1200 Second Ave. 3670 Keating

City Los Angeles

State Calif.

Name

San Diego, Relationship

Phone

Street No.

City

State

Name

Relationship

Phone

Street No.

City

State

PHYSICAL CONDITION

Right Eye

Left Eye

Wears Glasses No

Teeth

Right Ear

Left Ear

Heart

Right Hand

Left Hand

Right Arm

Left Arm

Right Limb

Left Limb

Right Foot

Left Foot

Right Lung

Left Lung

Hernia No

Truss Worn No

Hemorrhoids No

Subject to Fits No

Vaccinations Yes

Varicocele

SERIOUS ILLNESS None

OPERATIONS None

COMPENSATION RECORD

Date

Company

Cause

Amount

(Testimony of Henry J. Liegal.)

Trial Examiner Hektoen: Is there anything more of Mr. Liegal?

Mr. Harrington: No.

Mr. Riggs: No, sir. [549]

Mr. Harrington: Mr. Examiner, I don't know whether it is clear on the record, but we are having the front of it photostated.

Trial Examiner Hektoen: In other words, you are having the significant portion thereof photostated and you agree that they are to be photostated by whom?

Mr. Harrington: Respondent is going to have it photostated.

Trial Examiner Hektoen: All right, next witness.

Mr. Riggs: I call attention to the rates of pay that Mr. Fisher received. He went to work December 16, 1939 at 75 cents an hour. He was raised to 80 cents.

Trial Examiner Hektoen: Doesn't the exhibit speak for itself, Mr. Riggs?

Mr. Riggs: The last increase of 13 cents was on October 25, 1941, which raised him to 93 cents and then \$1.06 from 83 cents.

Trial Examiner Hektoen: All of which appears on your exhibit, does it not?

Mr. Riggs: I was pointing it out to you.

Trial Examiner Hektoen: Thank you, but I usually read them.

(Witness excused.)

Mr. Riggs: Mr. Stark. [550]

THEODORE STARK,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your full name and address?

A. Theodore (Ted) Stark; 3536 Arizona Avenue.

Q. Are you employed by Consolidated?

A. Yes, sir.

Q. What is your position?

A. Foreman, general wood mill foreman.

Q. General foreman of the wood mill?

A. Yes, sir.

Q. And was that your position in December, 1941?

A. I was foreman, I wasn't general foreman at the time. I was foreman.

Q. Now, you are general foreman and then you were foreman?

A. I was foreman and made general foreman now.

Q. Where is the wood mill?

A. It is next to building 3, on the north end—was at that time.

Q. In the Parts Plant? A. Parts Plant.

Q. Plant No. 2? A. Plant No. 2.

Q. Is the wood mill the farthest north of any building [551] of the company? A. Yes, sir.

(Testimony of Theodore Stark.)

Q. Except for the power plant which is alongside of it? A. Yes, sir.

Q. And how great an open yard is there between the wood mill and the next building on the south? A. Yes, sir.

Q. How great a space is there?

A. I would judge, oh, three hundred feet or four hundred feet from the building No. 3.

Q. 100 to 150 yards? A. Yes, sir.

Q. How many stories are there in the wood mill?

A. Two stories.

Q. Do you know Arthur J. Fisher?

A. Yes, sir.

Q. When did you first know him?

A. I never had the privilege of meeting the man, but I did meet him after December 13th.

Q. Had you ever seen him before?

A. I seen him in Plant 1 when I was in Plant 1 on occasions, at times.

Q. And did you know him by name?

A. No, sir.

Q. Now, what happened on December 13th?

[552]

A. On December 13th I was—I had orders to paint out—blackout the windows on the outside of the building by Mr. Maloney, and at that time Mr. Newman was taken in charge to get us started on the blackout, so at that time I was negotiating between Mr. Maloney and Mr. Newman to blacken out the place, to get material up there for my gang and from the paint shop.

(Testimony of Theodore Stark.)

Q. Prior to this time none of the glass in the plant had been painted black, had it?

A. No, sir.

Q. And the walls of the plant were white, were they not? A. Yes, sir.

Q. Now, do you remember that about December 11th there were petitions circulated around the employees on the night shift of Consolidated plant No. 2? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. Well, do you remember that there had been a blackout on the night of December 10th?

A. Yes, sir.

Q. Tell us about that. When did it begin and how long did it last?

A. That I don't remember; how long it was.

Q. Well, during the blackout the men lost several hours [553] of work, did they not?

A. (No answer.)

Q. Do you know whether they were paid for their time during the blackout?

A. No, I don't. They were paid as far as I can remember.

Q. Were there any lights on in the plant at all during the blackout? A. That I don't recall.

Q. Weren't you there? A. No, sir.

Q. You mean you weren't there on December 11th? A. No, sir.

Q. All right. Well, anyway, Mr. Newman had given you orders to get the wood mill blacked out, had he not?

(Testimony of Theodore Stark.)

A. He gave me orders to get started on painting building No. 3, the corner of building 3. At that time we started on the northwest corner.

Q. And were you painting the windows black?

A. Yes, sir.

Q. And were you painting the glass in the roof black? A. Yes, sir.

Q. Now, what happened on December 13, 1941, with reference to Mr. Fisher?

A. I told my men that they had to work over-time that night, to take their time out for eats and work that night on the [554] blackout on all the windows, and I got every man that I could in my department that could spray and in the meantime I had to go to Mr. Newman's office to get more painters from the paint shop.

Mr. Griffith got his men started and I had to go back to the office and order more pots from out of Los Angeles.

Q. And this was Saturday night, December 13th?

A. Yes, sir.

Q. About what time?

A. About 2:30 in the afternoon, close to 3 o'clock.

Q. In the afternoon instead of the night?

A. Yes, sir.

Q. And when did you or where did you first see Mr. Fisher?

A. I did not see Mr. Fisher until after 4 o'clock.

Q. Where was he then?

A. He was just going home at that time.

(Testimony of Theodore Stark.)

Q. Didn't you see him in the wood mill at any time on that day?

A. No, sir, I didn't see him personally; no, sir.

Q. Was it reported to you that Mr. Fisher had been in your department? A. Yes, sir.

Q. Who reported that to you?

A. Several of my men that are not with me now. They reported to me and said that they couldn't work Sunday; Mr. Fisher [555] said they could not work on Sunday, so I immediately went back to Mr. Newman and told Mr. Newman that my men went home and would not show up for Sunday so we would be short-handed.

Q. Had you ever had a union shop committee-man interfering in your department before?

A. No, sir. I had Mr. Young who was shop steward.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) Did you see Fisher in your department? A. No, sir.

Q. Talking to the men? A. No, sir.

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all.

Trial Examiner Hektoen: You are excused.

(Witness excused.)

Mr. Riggs: Mr. Mineah.

LAWRENCE E. MINEAH

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your address?

A. 3745 Villa Terrace.

Q. Are you employed by Consolidated? [556]

A. Yes, sir.

Q. What is your present position?

A. Night factory superintendent, plant 2.

Q. What was your position in August 1941?

A. In August 1941 I became general foreman of the wing department, department 69.

Q. Plant 2?

A. Well, I transferred from plant 1 to plant 2 during that month.

Q. And how many men did you have under your supervision at that time?

A. I can only estimate it.

Q. Well, estimate it?

A. I would say or estimate between 8 and 900 on the day shift.

Q. Well, were there a great number or small number of operations carried on in the Army wing department?

A. There were a good many of them.

Q. How many different operations are there all together?

A. I wouldn't even estimate it.

(Testimony of Lawrence E. Mineah.)

Q. Well, did you give any instructions to any of your subordinates regarding the issuing of passes to employees who wished to leave the department?

A. As a rule on employees leaving a department, it was our rule that they must obtain a signed slip from either myself or one of my assistants, which they turned over to the clerk [557] and the clerk, on the basis of the signed slip, issued them a roving badge which was their authority to leave the department.

Q. When was that rule put in force?

A. That was a rule that was in force in general in the parts plant when Mr. Newman took over—when it opened.

Q. In the summer of 1941?

A. That is right.

Q. Did that apply to union men wishing to leave the department as well as non-union men?

A. That applied to everybody except salaried personnel.

Q. Did it apply to union shop committeemen and union stewards?

A. Yes, sir.

Q. When did Arthur J. Fisher first come under your supervision?

A. I took him over with the department.

Q. He was in the department?

A. He was in the department when I took it over in August.

Q. Did you have any conversations with Mr. Fisher with reference to transacting union business

(Testimony of Lawrence E. Mineah.)

and if so, state where it took place and when, if you can, and the substance of the conversations?

A. I recall talking to him two or three times about it. I can't recall the exact conversations but the substance of it [558] each time was that he had left the department—it had been reported to me that he had left the department without permission and I had him down at my desk and told him that that was very much against the rules and that any further violations would mean his discharge.

Q. Did you tell him that he must procure your written consent to present to the clerk?

A. Either my consent or the consent of one of my assistants.

Q. And that that consent must be in writing or oral? A. In writing.

Q. Now, thereafter did you ever have any—can you tell when those conversations took place?

A. No, I couldn't. I remember the conversations but I can't recall the dates.

Q. Did they take place on more than one occasion? A. Yes.

Q. How many times?

A. I can't recall—at least twice.

Q. Now, do you recall an occasion at any time when Mr. Fisher ever made or filed a grievance about your telling him that he must stay in his department unless he got a rover's button through your permission?

A. He objected to being forced to get a rover's badge to leave the department, on the basis of the

(Testimony of Lawrence E. Mineah.)

fact he couldn't find the foreman at the time he wanted to leave and he felt [559] he should be able to leave on a minute's notice, and if he couldn't find a foreman to issue a written permit, it was interfering with his duties as a committeeman. He was quite put out about that.

Mr. Harrington: I object to that.

Q. (By Mr. Riggs) Did he so state——

Trial Examiner Hektoen: Read the last question, Mr. Reporter?

(Question read.)

The Witness: I am a little confused over the definition of "grievance" there.

Trial Examiner Hektoen: Did he file a grievance?

The Witness: Do you mean did he come down personally and make out a written grievance?

Trial Examiner Hektoen: File a written grievance?

The Witness: No.

Trial Examiner Hektoen: Then strike the previous answer. [560]

Q. There has been presented here in evidence, Mr. Mineah, as Board's Exhibit 16, a penciled grievance form signed by Arthur J. Fisher, without date. I show that to you and ask you if you ever saw it before, and ask you to read it.

A. Yes, I recall it now. I have seen it.

Q. What?

A. I have seen it. It was presented to me.

(Testimony of Lawrence E. Mineah.)

Q. You have seen it before?

A. I don't think it was presented to me. I think it was presented to Mr. Newman and came back to me through that channel.

Q. This grievance sheet says: "Upon one occasion you told Mr. Fisher to stay on the job from now on and that he said: What's wrong now? I notified your clerk I was going to see Mr. Newman and Mr. Larimore with the committeeman from Department 65. I have been allowed this time. I think you will find out I was allowed this in the Home Plant by Mr. Kelly.

Then, he states: You said, "I don't give a God damn what Kelly allowed you. You are not at the Home Plant now and if you do it again I will fire you."

Then he said: "Now, Min, don't get hot, cool off and we can talk this over."

Mineah said: I am hot and will not cool off and if you do this again I will fire you.

Did you ever have a conversation to that effect with [561] Mr. Fisher?

A. To that general effect, yes.

Q. What was it? Was it in that particular language?

A. I don't recall swearing, but—

Q. Did you mention that you were running the plant instead of Mr. Kelly?

A. I mentioned the fact we were no longer under Mr. Kelly's supervision.

(Testimony of Lawrence E. Mineah.)

Q. Did you tell Mr. Fisher he must stay on the job? A. Yes, sir.

Q. And get your permission in order to leave?

A. That is right.

Q. Have you repeated all the conversation?

A. I can't remember the exact wording of the conversation. That is in substance what I told him.

Q. Do you know when that conversation took place? A. I couldn't tell you.

Q. This doesn't refresh your recollection as to any time?

A. No, it doesn't. The thing is: I recall having that and reading it at one time and it didn't come to me from Fisher, I am quite sure. It came from Newman, I think.

Q. Had you been informed at any time that Fisher had a rover's badge in his possession?

A. I was so informed.

Q. Did you ever talk to Fisher about that? [562]

A. I wasn't told about it until after he disposed of it, or somebody had to take it away from him.

Mr. Harrington: I object to that.

Trial Examiner Hektoen: Yes. It will be stricken.

Q. (By Mr. Riggs) Did you ever have any conversation with him about it? A. No.

Q. Were there any occasions when Mr. Fisher asked you for leave to attend meetings with Mr. Larimore at Mr. Larimore's office? A. Yes.

Q. Did you give permission on such occasions?

(Testimony of Lawrence E. Mineah.)

A. Yes.

Q. Did you ever check up to ascertain whether Mr. Fisher had gone to Mr. Larimore's office?

A. I never made a formal check.

Q. What happened on January 1, 1942?

A. Well, that was the date Mr. Newman fired Mr. Fisher.

Q. I want you to tell us—I will pursue it by question and answer. On that date did Mr. Fisher at any time ask you for permission to leave his department?

A. No, sir.

Q. At any time did you ever give him written permission to leave his department on that date?

A. No, sir. [563]

Q. Do you know Mr. Elmer Gaulbeck?

A. Yes, sir.

Q. What was his position at the time?

A. He was supervisor.

Q. Had you given Mr. Gaulbeck the authority to give the shop committeeman any permission to leave the department?

A. No, sir.

Q. Did you see Mr. Newman on that day?

A. Yes, sir.

Q. Where did you see him?

A. I probably saw him several times that day.

Q. When did you see him first?

A. I can't recall.

Q. Did you have any conversation with Mr. Newman about Mr. Fisher on that day?

A. Yes.

Q. What was that?

(Testimony of Lawrence E. Mineah.)

A. He asked me if I or any of my assistants had given Mr. Fisher permission to leave the department.

Q. What was said?

A. I told him: No.

Q. Did you talk with Mr. Gaulbeck that day?

A. Yes, sir.

Q. What was the subject of that conversation?

A. I asked him if he had issued Fisher permission to leave [564] the department.

Q. What was his reply?

A. His reply was: No.

Q. Were you present when Mr. Fisher was discharged? A. Yes, sir.

Q. What happened then?

A. Mr. Newman sent one of my clerks upstairs where Fisher worked and asked him to come down to my office. He asked Fisher if he had left the department that day, which he had.

He asked him if he had a rover's badge and Fisher said he did have. He asked him how he got it and he told us he got it from the clerk. He then asked him if he had written permission from me or any of my assistants to get the badge from the clerk, and Fisher said: No. And we fired him.

Q. What was the name of the clerk Mr. Fisher said he got the badge from? A. Pickett.

Q. Is he with the company at the present time?

A. No.

Q. How old a man was he?

(Testimony of Lawrence E. Mineah.)

A. Well, he was a schoolboy, just at a guess, about twenty-one or twenty-two possibly.

Q. Did he leave the company to go back to college or school? A. Yes, sir.

Q. Did you speak to Mr. Pickett about the man? [565]

A. Yes. I investigated and found that Pickett had issued the rover's badge without permission from anyone, or authority, and I reprimanded him very severely.

Q. Did he say what Fisher said to him in applying for the badge?

Mr. Harrington: I object to that: Reprimanded him very severely.

Trial Examiner Hektoen. Do you object to the question pending?

Mr. Ryan: Yes, we object to that as hearsay and being too remote.

Trial Examiner Hektoen: What do you say, Mr. Riggs?

Mr. Riggs: I don't believe it is too remote. It is part of the *res gestae*, but maybe it is hearsay, and probably is. But I have always understood this tribunal was not bound by the particular rules of evidence.

Trial Examiner Hektoen: We would like to have a general idea where Pickett is. Is he at Stanford, or some place else?

The Witness: I don't know. He told us when he left, on the termination slip he said he was go-

(Testimony of Lawrence E. Mineah.)

ing to Arizona, to some school, and I believe it was Phoenix. But I am not certain on the school.

Trial Examiner Hektoen: Was Mr. Pickett a schoolboy working during the summer vacation?

The Witness: I couldn't say. Apparently he was, be- [566] cause he quit to go back to school.

Trial Examiner Hektoen: You don't know where he is now?

The Witness: I have no idea.

Mr. Riggs: I would like to ask the witness what Mr. Pickett told him with reference to the affair, what Mr. Fisher said when he applied for the badge.

The Witness: I can only tell you in substance.

Trial Examiner Hektoen: Wait a minute. I am inclined to receive it, but, of course, you know the way it is with such testimony.

Mr. Riggs: I would like to have it in for what it is worth, part of the general story.

Trial Examiner Hektoen: All right.

The Witness: You want to know what Pickett told me?

Mr. Riggs: Yes.

The Witness: He told me that he gave a badge to Fisher because Fisher said he had a verbal O.K. from Gaulbeck to have the badge.

Q. (By Mr. Riggs) Have you ever had any other shop committeemen under you in your department? A. Several.

Q. Have you ever had any difficulties with any of them about leaving the department?

(Testimony of Lawrence E. Mineah.)

A. No. [567]

Q. The shop committeemen that have been in your department procured leave when they left the department on union business or other business from you or your assistants? A. Yes.

Q. Have you ever had to take any disciplinary action against any other union shop committeemen in connection with this business of leaving the departments on union business?

A. I don't recall any.

Q. Can you give me any testimony as to the efficiency of Mr. Fisher as a workman while in your department?

Mr. Ryan: I object to that.

Trial Examiner Hektoen: Let us go off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record. Read the question.

(Question read.)

Mr. Riggs: I will withdraw that question.

Trial Examiner Hektoen: Very good. Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record. Anything else?

Cross Examination

Q. (By Mr. Harrington) Who are your assistants? A. Now?

(Testimony of Lawrence E. Mineah.)

Q. No, who were your assistants from August of 1941 to January, 1942, in that period of time?

[568]

A. You want me to name them all?

Q. How many have you had? You testified that permission to leave the department must be gotten from you or one of your assistants.

A. Well, I had William Miller and a Claude Burcell. They have changed supervisors so fast in the department it bothers me to recall. There were about six of them; Gaulbeck was a supervisor.

Q. Gaulbeck was one?

A. And——

Q. Well, how long did Fisher work in your department?

A. I couldn't tell you. He was there when I took it over.

Q. After you took it over how long did he continue to work approximately?

A. I took it over in August and he was discharged on the 1st of January.

Q. In that length of time did he receive raises in your department?

Trial Examiner Hektoen: The record speaks for itself, does it not?

The Witness: He must have; that was when we had the blanket increases.

Mr. Harrington: I haven't had an opportunity to examine it, Mr. Examiner.

Trial Examiner Hektoen: It is in here and it is

(Testimony of Lawrence E. Mineah.)

better [569] evidence than Mr. Mineah could give us.

Mr. Harrington: May I see that a moment?

Q. (By Mr. Harrington) Were there different rates of pay for the night shift than there were for the day shift? Was there a bonus for the night shift? A. Oh, yes.

Q. What was that bonus?

A. 8 cents per hour.

Q. If a man was on the night shift he would receive a bonus of 8 cents an hour. If he went back to the day shift would that bonus be taken away?

A. Yes, sir.

Mr. Harrington: I am not sure, Mr. Examiner, whether these——

The Witness: Those are all day rates.

Q. (By Mr. Harrington) Are they all day rates?

A. I can tell you by examining the sheet.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Q. By Mr. Harrington) On Respondent's Exhibit 6, will you tell us which is the night rate and which is the day rate, which of those figures represents the night rate under the column where it says "Rate"?

A. The second one from the top, 80 cents, is the night rate. [570]

(Testimony of Lawrence E. Mineah.)

Q. That represents the night rate. What is the rate immediately following it?

A. 75 cents.

Q. What does that represent?

A. Day rate.

Q. Is that changed from 80 to 75 cents, does that represent the differential, the bonus for the night shift? A. Yes.

Trial Examiner Hektoen: Furthermore, that one night rate you testified about is the only one that appears on the personnel record. Is that right?

The Witness: That is right.

Trial Examiner Hektoen: It is identified by "N" at the left hand side of the tabulation?

The Witness: Yes.

Mr. Harrington: A red "N"?

The Witness: Pardon me. Is that a complete record? Both of those sheets?

Trial Examiner Hektoen: One is a copy.

The Witness: One is a copy. I see.

Mr. Riggs: Wait a minute. Let us get this straight. Isn't there another night rate here on 4-12-41, where it says: Switch assembly, manual 88, labor agreement, and the next one underneath is 6-14-41: Assembly, 8-1-41 transfer Parts Plant. That was on the night rate when he was [571] transferred?

A. No, that is the day rate, I am pretty sure.

Q. Was there a difference in rate between the Home Plant and the Parts Plant?

A. Perhaps I didn't read that carefully enough.

(Testimony of Lawrence E. Mineah.)

Trial Examiner Hektoen: Read it very carefully, because this is rather important. I want your best idea. If you don't know, or don't feel qualified to testify, we will get somebody else.

The Witness: I have looked at enough of them.

Trial Examiner Hektoen: All right.

The Witness: No, that's the day rate.

Trial Examiner Hektoen: Anything more?

Redirect Examination

Q. (By Mr. Riggs) Is there a difference in the rate between the——

A. You are not reading this correctly. It says from 88 to 93, labor agreement. Then it says: 93 to 93 transfer Parts Department.

Q. He got the same rate when he was transferred to the Parts Department? A. Yes.

Q. An increase from 88 to 93 was the 5 cent increase that everybody got? A. Yes. [572]

Q. And from 93 to \$1.06 was the 13 cent raise everybody got?

A. That is right.

Trial Examiner Hektoen: Anything more of Mr. Mineah?

Mr. Harrington: Yes.

Recross Examination

Q. (By Mr. Harrington) Did you have any shop committee chairman in your department?

A. Committee chairmen?

Q. Yes.

A. Fisher was chairman of the committee.

(Testimony of Lawrence E. Mineah.)

Q. Did you have anyone other than Fisher?

A. No.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: Just one second. Attached to Respondent's Exhibit 6 is a slip called "Termination of Employment," covering Fisher, in which it is checked: O.K. for hire in your department. Yes. Signed: Mineah.

Does that have any special significance that wouldn't seem obvious?

The Witness: Not that I know of.

Trial Examiner Hektoen: It means what it says, in other words?

The Witness: Yes.

Trial Examiner Hektoen: Very good. That is all. [573]

Redirect Examination

Q. (By Mr. Riggs) When was that signed, do you know?

A. At the time he was discharged.

Q. What did it mean?

A. It means what it says.

Q. He is O. K. for rehiring in your department?

A. I put it on there. I can't deny it.

Q. After he was discharged was the matter taken up with the various foremen of the Parts Plant to see whether they would take Mr. Fisher back in their department?

A. Not that I know of.

Q. Was it ever taken up with you?

(Testimony of Lawrence E. Mineah.)

A. No.

Mr. Riggs: That is all.

(Witness excused.)

Trial Examiner Hektoen: We will recess until 10:00 o'clock a. m.

(Whereupon, at 5:15 o'clock p. m., September 3, 1942, an adjournment was taken until 10:00 o'clock a. m., Thursday, September 4, 1942.) [574]

Conference Room,
Chamber of Commerce Building,
San Diego, California,
Friday, September 4, 1942 [575]

Trial Examiner Hektoen: The hearing will be in order.

It is stipulated by and between all parties hereto that line 14 of page 192 of the record be amended to read as follows:

"A. From December 18, 1939 until January 1, 1942."

You may proceed, Mr. Riggs.

Mr. Riggs: Mr. Watt.

ROBERT WATT

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) What is your name and address?

A. Robert Watt, 9131 Madison Avenue.

Q. In December 1941, were you employed by Consolidated? A. Yes, sir.

Q. What was your position?

A. Foreman, general foreman in the jigs and fixtures.

Q. That was in plant 2?

A. Plant 1 and 2—in plant 2, yes.

Q. Where was your office?

A. In the north end of building 3 in plant 2.

Q. Do you remember the 13th day of December 1941? A. Well, yes.

Q. Well, do you remember a day when you saw Mr. Fisher [577] in your department?

A. Yes, sir.

Q. Do you remember whether that was the 13th of December?

A. No, sir; I couldn't say. I seen him in my department more than one day.

Q. What did you do about it?

A. Well, he had been around my department once or twice—in fact a few times in my department, even though I had my own stewards there.

One day I did call up Mr. Newman and asked

(Testimony of Robert Watt.)

him why he couldn't be kept out of my department or why he was in my department.

Q. Was it the customary practice for union committeemen entering your department to tell you so first?

A. My committeemen and steward do that all the time. Anytime they want to talk or go anywhere they always come and ask me.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) Do you know what Fisher's official position in the union was in December 1941?

A. I don't know.

Q. Do you know that he was chairman of the shop stewards?

A. No, I can't say I do. He had a lot to do with it but I can't exactly tell you truthfully what his position was. [578]

Q. Who is the committeeman in your department? A. Mr. Thomas.

Q. Does he leave the department on union business?

A. He sometimes has to go down to the different buildings but he never goes without coming and asking my permission.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: That is all, Mr. Watt.

(Witness excused.)

Mr. Riggs: Mr. Borg.

WALTER R. BORG

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Riggs: Mr. Examiner, I think it was suggested yesterday by yourself that the previous discharge of Mr. Fisher and his reemployment was not the basis of any charge of discrimination against the union in this case.

Mr. Borg is the witness upon that phase of the case. If the attorneys for the Labor Board will stipulate that the previous discharge of Mr. Fisher was not due to any union activities, that is, not made the basis of any charge of discrimination against the union, some of this testimony may be eliminated.

Mr. Harrington: It is not the basis of any 8(3) charge, but it does go as evidence to show the company's attitude [579] toward Fisher because of his union activities.

Q. (By Mr. Riggs) All right, Mr. Borg, will you give your address?

A. 4672 Campo Drive.

Trial Examiner Hektoen: What is your first name, Mr. Borg?

The Witness: Walter R.

(Testimony of Walter R. Borg.)

Q. (By Mr. Riggs) Are you employed by Consolidated? A. I am.

Q. And what is your position?

A. I am a foreman in final assembly at the present time.

Q. What department is that? A. 40.

Q. What?

A. Department 40.

Q. What was your position in 1940?

A. I was a leadman for about 7 months, 7 or 8 months of that year.

Q. Was that in the cawling department?

A. That was the cawling department; that was the cawling department of the sheet metal department.

Q. Who was your foreman?

A. Mr. Liegal; Henry Liegal.

Q. Was Mr. Fisher at any time placed in your department? A. He was. [580]

Q. Do you remember when that was?

A. It was around the middle of the year 1940, about, oh, I would say June.

Q. At any time did you have any talks with Mr. Fisher about his work?

A. Oh, yes, several times.

Q. Will you give us the substance of those conversations and fix the time, if you can?

A. Well, all I told him was he had to get going, that is all. That was about the substance of it. His workmanship in the sheet metal end wasn't

(Testimony of Walter R. Borg.)

holding up to the rest of the group of men who he was working with.

Q. Did Mr. Liegal talk with you about Mr. Fisher's work?

A. Yes, several times.

Q. Did you report to him your comments upon Mr. Fisher's work?

A. Yes, sir, I did.

Q. Was Mr. Fisher discharged by you?

A. No; he was discharged by Mr. Liegal.

Q. Was his discharge upon your recommendation?

A. I didn't recommend he be discharged, but I recommended he be taken out of the department.

Q. Now, at that time did you have any office in the Union? A. Yes, I did.

Q. What was it? [581]

A. Committeeman.

Q. Was Mr. Fisher a Union officer?

A. No, he was not.

Q. Now, it has been stated here, Mr. Borg, that Mr. Fisher was discharged because of discrimination against the Union and it has also been stated that at one time you proposed a resolution in Union meetings about working more than 40-hours a week, on some statement that was made by Mr. Fleet.

Do you recall anything in that regard?

A. I do not.

Q. Did you ever act as the proponent of resolutions in a Union meeting to have the men work 40-hours a week?

(Testimony of Walter R. Borg.)

A. Not to my knowledge.

Q. Did Mr. Fisher's Union membership have anything to do with his discharge?

Mr. Ryan: I object. That is calling for a conclusion.

Trial Examiner Hektoen: Sustained.

Mr. Riggs: That is all. [582]

Cross Examination

Q. (By Mr. Harrington) How long was Fisher under your supervision?

A. Oh, about a month.

Q. Do you reprimand any of the men under you from time to time? A. I do.

Mr. Harrington: No further questions.

Trial Examiner Hektoen: That is all, Mr. Borg, thank you.

(Witness excused.)

ELMER GAHLBECK

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Your name?

A. Elmer Gahlbeck.

Q. And your address?

A. 2176 Guizot Street.

(Testimony of Elmer Gahlbeck.)

Q. Are you employed by Consolidated, and if so, in what capacity?

A. Yes, sir, I am assistant foreman at the present time in the wing department, Department 69.

Q. Is that located in Plant No. 2? [583]

A. Parts plant; that is right.

Q. What was your position from October, 1941 to January, 1942? A. Supervisor.

Q. Were you supervisor in the same department?

A. Yes, sir.

Q. And is the present location of your office the same as it was then? A. Yes, sir.

Q. You have been promoted from supervisor to—— A. Assistant foreman.

Q. Do you recall when Mr. Fisher became one of the men under your supervision in the wing department?

A. He was already there when I took over the supervisor's job.

Q. In October, 1941 he was already there?

A. Yes, sir.

Q. Shortly after you became supervisor did anything cause you to take up something about Mr. Fisher with Mr. Mineah?

A. I inquired of Mineah a couple of times where Fisher has gone and he went out on different occasions and like that. I inquired about that. I seen he wasn't on the job so I inquired of Mr. Mineah.

Q. What did Mr. Mineah say?

A. I don't recall at the present time. [584]

Q Did Mr. Mineah state to you you could have

(Testimony of Elmer Gahlbeck.)

authority to give permission to leave the department when that was desired?

A. Did who have the authority?

Q. Did Mr. Mineah tell you that you could give permission to leave the department?

A. No, sir, he did not. I could not authorize any authority to issue any buttons out at all.

Q. Did he state you didn't have authority to issue such permission?

A. He just says I didn't have authority to issue out permits for Rover's buttons, as they called them at that time.

Q. What was the practice in your department with reference to issuance of Rover's buttons?

A. They had to see the foreman, and if I am not mistaken, I believe the assistant foreman, but the supervisor did not have the authority; at least, I didn't have it.

Q. On January 1, 1942 did you give Mr. Fisher permission to obtain a Rover's button to leave his department?

A. No, sir.

Q. Did you have any talk with him about Rover's buttons on that day?

A. Not that day. I didn't have time to.

Q. Did you on any other day have occasion to talk to him about a Rover's button? [585]

A. All the time I asked him if he ever had a Rover's button he would say "Yes," and I would ask him where he got it from because he didn't get them through me.

(Testimony of Elmer Gahlbeck.)

Q. At any time after the first of January were you called to the office of Mr. Newman?

A. I was.

Q. Who else was there?

A. Mr. Mineah and some of the clerks.

Q. Do you know what clerks were there?

A. I believe the gentleman that issued the "r" buttons.

Q. Do you remember his name?

A. Prichard?

Trial Examiner Hektoen: Pickett?

The Witness: Pickett, that is right.

Q. (By Mr. Riggs) What happened in Mr. Newman's office?

A. We weren't in Mr. Newman's office, we were in Mineah's office.

Q. Mr. Newman came to Mr. Mineah's office?

A. That is right.

Q. You were there, and Mr. Pickett was there, and was Mr. Fisher there?

A. He was, afterwards; they called him down.

Q. What happened when you reported to Mr. Mineah's office?

A. You mean what happened down there?

Q. Yes. [586]

A. Mr. Newman only asked me if I had authorized permission for Mr. Fisher to go out, and I said I did not, I had no authority to do so.

Q. What happened after Mr. Fisher got there?

A. They questioned him, and there was a few words said between Mr. Newman and Mr. Fisher.

(Testimony of Elmer Gahlbeck.)

Trial Examiner Hektoen: Those are what we want to hear.

The Witness: I don't know what they were, but they were talking back and forth, and that was all I heard. After that I heard he was discharged.

Q. (By Mr. Riggs) Did anyone ask Mr. Fisher while you were there whether he obtained permission from the foreman to leave his department?

A. I believe they did.

Q. Tell us what you remember with reference to it.

A. You mean the whole story, or just down there?

Q. Just down there. What happened down there while Mr. Fisher was present?

A. So far as I can recall, they had Mr. Fisher come down from the second mezzanine to the office, and I believe they questioned him what had taken place, where he had got the button, and he told them.

Q. What did he say?

A. He says, "The clerk gave it to me." [587]

Q. What else was said?

A. He said he was doing his duty in the outside there, whatever he was doing, and that was as far as he went right there; and, of course, they discharged him. I heard Mr. Newman say to make out his time. That's as far as it was.

Q. Have you given us all the conversation you remember in Mr. Newman's office?

A. Yes. There wasn't but a very, very little. I was only in there just a few minutes, and that's all there was to it.

(Testimony of Elmer Gahlbeck.)

Cross Examination

Q. (By Mr. Harrington) Did Mr. Fisher mention anything to you that day about men working out in the rain without raincoats?

A. He started to tell me that, when he came back, and just about that time——

Q. When he came back from where?

A. From where he was, and I don't know where he was coming from.

Trial Examiner Hektoen: How did you know he was coming back?

The Witness: He just come up there. I was sitting there, and Mr. Fisher was telling me he got to wrangling and about that time that happened, I had orders to come down to the main desk.

Q. (By Mr. Harrington) At any time before that day did he [588] say anything about the men working out in the rain without raincoats?

A. No, not that I recall.

Q. Did you say anything to Fisher about leaving the department without permission before, that day?

A. No, this happened early in the morning.

Q. How long had Fisher been under you?

A. Since October, when I took over the supervisory job, until January 1.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: You are sure he hadn't talked to you about this raincoat business, or the janitors that morning?

The Witness: Not that I recall. He started to tell me about it, just about the time the clerk came from

(Testimony of Elmer Gahlbeck.)

upstairs and stated I was wanted at the desk immediately.

Trial Examiner Hektoen: That is all, thank you.

(Witness excused.) [589]

Mr. Riggs: Mr. Kimball.

DONALD L. KIMBALL

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Where do you live?

A. 3743 Bancroft Street.

Q. Mr. Kimball, are you employed by Consolidated? A. I am.

Q. When did you first go to work for Consolidated? A. December 1936.

Q. And what was your job at that time?

A. At that time I was a department clerk.

Q. What is your position now?

A. I am a leadman in the Army wing department.

Q. What was your employment around the 1st of January 1942?

A. Chief clerk in the wing department.

Q. And who was the foreman of that department? A. Mr. L. Mineah.

Q. Was the previous witness, Mr. Gahlbeck, the supervisor in that department also?

(Testimony of Donald L. Kimball.)

A. Yes, sir, he was.

Q. Who was the assistant foreman?

A. There were several assistant foremen. You mean at that time? [590]

Q. Yes.

A. In that particular section Mr. Gahlbeck's assistant foreman, I think, was Mr. Laing.

Q. How do you spell that?

A. L-a-i-n-g. There were several other assistant foremen in the department.

Q. Is that a large department?

A. Very large. It is the largest, I believe.

Q. How many men were in the department around the 1st of January?

A. On the day shift there must have been 1500.

Q. And the night shift?

A. Well, altogether about 2700 in the whole department.

Q. What can you say as to whether there was a rule in the department about clerks giving *our* rover's badges?

A. We had definite orders to issue badges only to those who presented us with a written request for us to give the badge, from the assistant foreman or foreman, and that is what we did.

Q. Now, who gave you those instructions?

A. Mr. Mineah.

Q. Were there occasions when Mr. Fisher presented written permits to obtain a rover's badge to you? A. Yes, sir, there was.

(Testimony of Donald L. Kimball.)

Q. Can you state how often he presented written authority [591] for a badge?

A. Well, it varied. Sometimes he would want to go out twice a day and maybe at another time only once a day and maybe there would be days he wouldn't go out

Q. How long was Mr. Fisher in the same department with you?

A. Let me see. I don't remember the dates when he came to work in the wing department but it must have been in the neighborhood of 2 years that he worked in the department with me.

Q. And during the year 1941 he had been a union shop chairman?

A. I knew he was a committeeman or chairman. He had a lot of union business.

Q. Was it during throughout the year 1941 that from time to time he would submit a written permit for a rover's badge?

A. I wouldn't say throughout the year.

Q. Well, all I want to get at, Mr. Kimball, is——

A. He did, yes.

Q. If you can give us an idea of how often he presented a written permit to obtain a rover's badge while he was in the same department with you?

A. Well, I thought I covered that pretty good the other time. It was quite often near the latter part of 1941—it got more often than before—quite often. We used to comment on how much time he was going in and out of the departments. [592]

(Testimony of Donald L. Kimball.)

Q. Did you ever issue him a rover's badge without his presenting written permission?

A. No, sir. At times he asked me and I would refer him back to the foreman or assistant foreman.

Q. Did you ever ask him if he had a rover's badge in his possession?

A. I never asked him. He showed me a rover's badge that he had that I had no record of him having.

Q. Did you ask him where he got it?

A. I asked him how he got it and he said:

"Wouldn't you like to know."

Q. Had that badge been issued by your department?

A. Well, as I said I didn't issue it and I had no record of him having it. Now, there are other ways he could have gotten it, I imagine—finding it.

Q. But you don't know how he got it?

A. That is right.

Q. Did you issue a rover's badge to him on January 1st, 1942? A. I did not.

Q. Do you know who did issue him a badge?

A. A fellow that was working for me named Pickett—Donald Pickett.

Q. What has become of Mr. Donald Pickett?

A. Well, a short time after we had this trouble, why, he quit and went to Arizona—he said to continue school. [593]

Q. How old a man was he?

A. He was about 20 or 21. I don't recall his exact age, but he was a fairly young fellow.

(Testimony of Donald L. Kimball.)

Q. Did you talk with Mr. Pickett at any time as to how he came to issue the rover's badge?

A. Well, he had already received a talking to by both Newman and Powell—I mean Newman and Mineah and I didn't have any reason to talk to him about it, but I did just ask a question and he told me he thought it was all right to let him have it.

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) How long was this rule in effect?

Mr. Riggs: Just a minute. Are you a member of the Union?

The Witness: Yes, sir, I am.

Mr. Riggs: Were you at the time this thing happened?

The Witness: No, sir.

Mr. Riggs: That is all.

Q. (By Mr. Harrington) How long was this rule in effect that clerks could give badges only to those who had written authority?

A. Well, it was in effect very strenuously ever since we transferred up to the parts plant. Now, that was in—I can't exactly recall the date, and before that, that was [594] when we started using the rover's badge—before that they had the same sort of a system only they issued a paper slip as passes or rovers.

Q. Did you see Fisher every time before he left the department? A. You say every time?

Q. Yes.

(Testimony of Donald L. Kimball.)

A. I wasn't there all the time. I naturally wouldn't see him every time that he left the department. I have seen him go quite a few times.

Q. Did you know that he always had written authority before he left?

Mr. Riggs: I object to that.

Trial Examiner Hektoen: If he didn't see him go every time he wouldn't know that.

Q. (By Mr. Harrington) That badge that Fisher showed you, you didn't know he had and you don't know how he got that badge, do you?

A. No, sir, I don't.

Q. And you stated that Pickett gave Fisher the badge on January 1st? A. Yes, sir, he did.

Mr. Harrington: We have no further questions.

Redirect Examination

Q. (By Mr. Riggs) The badge that Pickett gave him on [595] January 1st wasn't the badge that Mr. Fisher had showed you previously, sometime prior to that, was it? A. No, sir.

Q. Do you have a rover's badge on now?

A. I have one of the new type. That is different than the ones we had. The ones we had were red with a black R on it but about the same size.

Trial Examiner Hektoen: You were the chief clerk there and Pickett was your assistant, I take it.

The Witness: He was one of them.

Trial Examiner Hektoen: How many assistants did you have?

The Witness: I had about ten at that time.

(Testimony of Donald L. Kimball.)

Trial Examiner Hektoen: Were they all able to issue badges?

The Witness: Well, Pickett was the one that was more or less—had the most or the bulk of the work at that time. He was stationed at a place—at a certain place and handled most of them.

In the event he was gone myself or two or three other fellows could do it. There wasn't anything hard about it, just the responsibility of knowing and seeing they were properly issued.

Trial Examiner Hektoen: So the process was divided among four or five fellows? [596]

The Witness: Yes, sir.

Trial Examiner Hektoen: That is all.

Q. (By Mr. Riggs) What form did the written permission take? Was it just a slip of paper with "okay" on it by the foreman? A. Yes, sir.

Q. Or was anything printed on it?

A. At one time we had printed forms and we ran out of them and used any kind of paper. It was just:

"Please permit so and so, number so and so to go" wherever he had permission to go to, and then we gave him the rover's badge. That could be verbal if the foreman was standing there.

Of course if he was standing there he wouldn't go to work and write a paper. He would say:

"Give Mr. so and so a rover's badge," and we would do it.

Q. That is, if the foreman was near enough to

(Testimony of Donald L. Kimball.)

you go give the oral orders you would take those oral orders?

A. Yes, sir; but if the man came up—for instance if a man would come up and say:

“Mr. Mineah says I can leave the department,” that wasn’t good enough.

He would have to have it verbally right there or in writing.

Q. Did those instructions that you received in that regard apply to Mr. Fisher as well as anybody else in the department? [597] A. Yes, sir.

Mr. Riggs: That is all.

Trial Examiner Hektoen: You are excused; thank you.

(Witness excused)

Mr Riggs: May we go off the record.

Trial Examiner Hektoen: Off the record.

(Discussion off the record)

Trial Examiner Hektoen: On the record.

Mr. Riggs: I would like to offer in evidence a copy of the company’s rule book, issued March 25, 1940, as respondent’s Exhibit 7.

(The document above referred to was thereupon marked as Respondent’s Exhibit No. 7 for identification.)

Trial Examiner Hektoen: Are those rules in effect now?

Mr. Riggs: Yes.

Trial Examiner Hektoen: Without change?

Mr. Riggs: Yes.

Mr. Harrington: We have no objection to this.

Trial Examiner Hektoen: Respondent's Exhibit No. 7 is admitted.

(The document above referred to, heretofore marked as Respondent's Exhibit No. 7 for identification was thereupon received in evidence.)

RESPONDENT'S EXHIBIT No. 7

Excerpt from Consolidated Aircraft Corporation's book, "Rules for Employees", issued March 25, 1940:

"2. Periods of Work.

* * *

(b) No employee is permitted to leave his department during working hours without the authority of his foreman."

Trial Examiner Hektoen: In the absence of further witnesses, available this morning, we are in adjournment [598] until 2 o'clock p.m.

(Whereupon, at 11 o'clock a.m., the hearing adjourned until 2 o'clock p.m., the same day.)

[599]

After Recess

Trial Examiner Hektoen: We will be in order.

Mr. Riggs: Mr. Shannon.

EVERETT M. SHANNON

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued)

Trial Examiner Hektoen: You testified here yesterday, Mr. Shannon.

The Witness: Yes, sir.

Q. (By Mr. Riggs) Mr. Shannon, on page 374 of the record yesterday you said you would come here tomorrow and bring the names of the union men who had been recommended for an increase by the foremen in your department? A No, I did not.

Q. What did you say you would bring?

A. I asked before I left that day if I was to bring them, and they said: No, that you had not told me to bring them. I could bring them, yes. I can furnish any amount of those.

Q. I asked you on page 374:

“Mr. Shannon, listen to me. You are under oath. Will you swear that there was any case specifically that you can bring here tomorrow and show the Examiner where the foreman had recommended a union man for an increase that you did not, [600] on behalf of the union, ask the shop committeeman to demand more than that amount for that man?”

And your answer was:

“Yes, sir; I can bring some.”

A. Yes, sir, I did.

Q. I will ask you if you can go and——

(Testimony of Everett M. Shannon.)

A. You did not ask me to bring them. You asked me if I could, and I said I could.

Q. I want the particulars. Therefore, I will ask you to go and get those and bring them back.

Mr. Harrington: Mr. Examiner, I think that is immaterial.

The Witness: He didn't tell me to.

Trial Examiner Hektoen: Just a minute, please. Why?

Mr. Harrington: The issue here isn't as to who Mr. Shannon recommended for increases and who he didn't recommend for increases.

Mr. Riggs: The issue here is that union members were discriminated against by the company, and I told you yesterday I intended to prove exactly to the contrary, that it was the union men in these wage review cases brought up which were not discriminated against; they were non-union men, and this witness has gone far toward it——

Mr. Harrington: That isn't an issue in this proceeding.

Trial Examiner Hektoen: Off the record. [601]

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

You say you can get such information, Mr. Shannon?

The Witness: Yes, sir; I believe he said, "Could I," and I could. But he didn't say: Will you?

Trial Examiner Hektoen: I agree with that. Can you, at this time?

The Witness: I can.

Trial Examiner Hektoen: You are excused, then.

Mr. Riggs: Off the record.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Mr. Riggs: Mr. Perry.

L. A. PERRY

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Cross Examination (Continued)

Trial Examiner Hektoen: You have previously been sworn, Mr. Perry.

The Witness: No.

Trial Examiner Hektoen: Yes. You testified here before.

The Witness: Yes. [602]

Trial Examiner Hektoen: Be seated.

Q. (By Mr. Riggs) Mr. Perry, when did you say you became business agent of the union?

A. The first of January, 1942.

Q. In addition to being a business agent with your union, you are also a columnist for the newspaper, are you not?

A. I do considerable writing, yes.

Q. I want to show you a column headed by your

(Testimony of L. A. Perry.)

name in the Aero News of Friday, March 27, 1942, and ask you to read that and tell me whether you wrote the article therein.

A. That is true, yes.

Mr. Riggs: I would like to have certain extracts from this article in evidence. I don't care for all of it. If Mr. Harrington would like it all, it makes no difference to me.

Mr. Ryan: Let me see it.

Mr. Harrington: What article is it? What parts do you wish to offer, please?

Mr. Riggs: The part which has been enclosed in blue pencil.

Mr. Harrington: I object to that on the ground it is irrelevant.

Trial Examiner Hektoen: It may be admitted.

(The document referred to was received in evidence and marked Respondent's Exhibit No. 8.) [603]

RESPONDENT'S EXHIBIT No. 8

March 27, 1942 Aero News

On The Firing Line

By L. A. Perry

Business Representative

(Cut)

Representing Departments: 19, 30, 35, 37, & 69,
80, 85, 87, 90, 91.

High Cost of Living

As fast as we make it we spend it so the Union

(Testimony of L. A. Perry.)

is naturally interested in making the member's dollar do a hundred cents worth of worth, as any good Union Dollar should. To aid the worker along this line the Government has set up the Price Control law. To get the most out of this anti-profiteering piece of legislation, as a member of this Union, I would like everyone to advise me by card, letter, or phone, of any retail price that is out of line with the standard set up by the local authority, or has increased rather sharply in a short space of time. I might include rent also, as the machinery is set up now to crack down on landlords that are taking advantage of the worker by increasing the rent above the level of January 1st, 1941. We have the blanks here at the Hall (1054 3rd Ave.) and if you find it inconvenient to get down to the Hall just drop me a card and I'll send you one to fill out and return to this office for action. So if the rent has gone up out of reason we'll assist you in hammering it back down. I speak of all these items because we are a part of the Consumers Committee for Price Control in this area.

Union Shop—Our Goal

After analyzing many of our present problems down at the Plant and the growing reluctance of the Company to bargain with the Union on any item that comes up between the man and his Foreman, not to mention that 75 per cent of the employees are in the helpers classification, it is easy to see that the answer to this sad state of affairs

(Testimony of L. A. Perry.)

is a united Labor Organization in that Company. Big Capital needs Big Unions to properly cope with the steam-roller tactics that creep in when Big Capital takes over. A graphic instance of what is going on down in the Factory now, might be illustrated by the following episode that happened last week: a man recently hired into the Inspection Department at the Home Plant came steaming into the Hall, asking in no uncertain terms for a Business Agent, which in this case happened to be myself. He said, "I just came in from Minneapolis last week, and conditions are terrible here in Inspection Department. My God, do those boys ever need a Union; sign me up right now." Which reminds me that a lot of the others there feel the same way for we are taking the Inspectors into the Union in droves now where before it was a mere trickle. We signed up 531 men and women last week alone and before long I am of the opinion that we will exceed the all-time record set last April when we took in slightly over 1500 in one week, before the present drive for additional membership strength is over. We need every bit of strength we can muster, as many groups on the Capitalists side of the fence are lining up against us now. This coming Wage Review will do much to equalize wage discrepancies if it is supported by a large, militant membership. Of course, the non-member doesn't expect much out of his Review, at least, it is my opinion that he had better not, so his disappointment will be less keen, for whether you

(Testimony of L. A. Perry.)

know it or not, this is one time when the Company can't put anything over without the Union agreeing to it, and we'll see that we don't get pushed around too much!

[Printer's Note: The matter beginning with the word "This coming Wage Review" and ending with the word "put" is enclosed in blue pencil in the original.]

Department 19

This is one department where we have plenty of minor violations of our Agreement as regards consulting with the Shop Committeemen before approving increases for men in the Department. I might add that we are cataloging all the violations of our Agreement as they occur and when the list gets to be large enough we will go to the War Labor Board, and show this Company how many ways there are to kill a cat besides drowning it in milk!

Department 39

This is a brand new Department, and I understand it will be called PB2Y3 Final Assembly. At present Al Hogan is serving as Shop Committeeman there until the Department is large enough to either confirm him as Shop Committeeman or elect another. It is essential to have a Shop Committeeman no matter how small a Department is.

All Departments (Third Shift)

Although the majority of the third shifts are comparatively small in number yet it is very necessary that they all have Committeemen to serve and

(Testimony of L. A. Perry.)

protect the membership there and too, to comply with the various provisions of our Agreement. In some of the Departments present committeemen were transferred over from one of the other shifts, but if not then it will be up to the members working on this shift to assist me to provide one for them. To do that, come up to the Office and get a paper with the proper wording on it to circulate as a petition for appointment of the man that is agreeable to the largest number of men working there, to serve as Committeeman.

Other Departments

I don't have much news about other Departments but here is the place to air your news and views about conditions in the Department that you are working in. I'll appreciate all items and suggestions on ammunition for our Firing Line, and in the meantime, give your Committeeman a pat on the back for a good job well done, even as I am, because at the best his job is no bed of roses.

To Committeemen

Don't stick your neck out in your dealings with the Foreman. If you have to disagree with him (which is about all the time), present your case as you see it, and if it involves a violation of the Agreement, contact this office as soon as you can, and the same if it involves working conditions. Let the Business Representative do all the leading with his chin, as he isn't so apt to have it knocked off as you are, as he isn't on the Company payroll, which makes all the difference in the world some-

(Testimony of L. A. Perry.)

times. We've got an anti-Union Company to buck on their own ground so watch your job and we'll mop up on the violations via the legal channels, and How!

Mr. Riggs: Instead of marking the article, Mr. Examiner, I think it will serve the convenience of all concerned if I read the extract I want to put in evidence in the record.

Trial Examiner Hektoen: I think it would be better if you would put the page in, and then the only thing that would be necessary would be to have that part indicated by the blue pencil.

Mr. Riggs: I haven't got this in duplicate. I will put the column in instead of the page.

Trial Examiner Hektoen: All right.

Mr. Riggs: I will offer in evidence the column entitled: "On the Firing Line, by L. A. Perry, Business Representative of the Aero News," of Friday, March 27, 1942, in particular that part of it which is enclosed in blue pencil, which I would like to read on the record.

Trial Examiner Hektoen: It will be in the record.

Mr. Riggs: Could I read it on the record, because I haven't got the additional copies of the newspaper to furnish, and it doesn't seem to me there is anything else in the column which is material.

Trial Examiner Hektoen: Suppose you furnish the copy, consisting of just a typewritten piece of paper of that extract, the one we are particularly interested in?

(Testimony of L. A. Perry.)

Mr. Riggs: All right. I will do that.

Q. (By Mr. Riggs) In this article, Mr. Perry, Respondent's [604] Exhibit 8, "Of course, the non-member doesn't expect much out of his Review, at least it is my opinion he had better not, so his disappointment will be less keen."

Why should the non-union man not expect much out of reviews?

Mr. Ryan: I object to that as immaterial, asking for an expression of opinion by this witness.

Trial Examiner Hektoen: He may answer.

The Witness: Primarily, the non-union person in the shop would expect very little results of being in the collective bargaining unit if he had no voice in selecting the representation which he would have a voice in, by being a member of our union.

Q. (By Mr. Riggs) Do you mean your bargaining unit didn't look after the interests of non-members as well as they did the interests of union members?

A. It could be assumed as such, by knowing something about activities, of organized activities in the past.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington) Mr. Perry, that is just a statement of your opinion?

A. It is. It has no official reflection on my duties as business agent.

Mr. Harrington: I have no further questions.

(Testimony of L. A. Perry.)

Recross Examination

Q. (By Mr. Riggs) That was union policy, I think you said, was it not?

Mr. Harrington: The articles speak for themselves.

Mr. Riggs: I will withdraw that.

Q. (By Mr. Riggs) Was it or was it not union policy that the union as bargaining agent for all employees of this plant did not look after the interests of the non-union man in the same degree they did of the union men?

A. It is just merely assumed. I don't know as to whether the policy could be definitely stated or not. I am not aware of a policy of that kind, however.

Q. Who gave the union committeemen their instructions with reference to these wage and increase matters?

A. Instructions are issued in several ways. Primarily, they have the duties of shop committeemen's folder, as well as the card, to indicate their general duties, and that card, of course, is made up as all unions have a standard form, and has nothing to do with any particular collective bargaining unit.

Q. Were the shop committeemen instructed as to how they should regard individual rate increases?

A. I believe in the shop committee meetings there may have been some mention, under an educational program, as to action and conduct of our men in wage reviews. [606]

(Testimony of L. A. Perry.)

They have a very complex job to perform, and they may have received specific instructions that could be construed as such. Of that I have no direct knowledge.

Q. Was the policy of the union that all persons in the plant should receive wage increases on their respective merits?

A. Increases, if obtained, would be on the merits of the job being performed.

Q. And isn't it a fact that there are a great many cases where proposed increases of employees were rejected by the union when they were non-union men and accepted when they were union men?

A. There may have been instances of which I wouldn't be aware of any specific instance. In cases of that nature if the man felt he couldn't adequately represent them because he had not enough direct knowledge of the man's activities—that might happen.

Q. It was his duty to get direct knowledge. Wasn't that the job of the shop committeeman?

A. It is easy to relegate duties, but hard to enforce them.

Q. If the shop foreman didn't get enough knowledge about any particular individual to know whether to acquiesce or reject a wage increase projected, it was his own fault, wasn't it?

Mr. Ryan: I object to that as a hypothetical question.

(Testimony of L. A. Perry.)

Trial Examiner Hektoen: Do you think you can answer it, [607] Mr. Perry?

The Witness: Well, I'll tell you; primarily it could be answered that first, our wage review administration of it was not properly set up as we saw it, and later on, some adjustments were made in it, and the company then agreed that the individual committeemen might have access to the individual places of work on company time, which was a general agreement between the union and the company, and improved the administration of the wage review, considerably. [608]

Q. Do you remember as one of the business agents of the union making a report sometime in May, 1942?

A. I don't recall any particular dates relative to any report.

Q. Now, let me show you an issue of the Aero News of Friday, May 29, 1942, page 3, and ask you if that doesn't refresh your recollection that you, as one of the business agents, made a report to the union about that time?

(Handing paper to the witness.)

A. Which one do you refer to?

Q. I refer to these two columns headed "Business Agents Report."

A. Do you refer to the last paragraph there?

Q. I refer to all of those two columns on page 3, Mr. Perry, including down to the end of the second column.

A. (No response.)

Q. Will you answer my question?

(Testimony of L. A. Perry.)

A. What was that question—if I may have it? Trial Examiner Hektoen: Read the question.

(Question read.)

A. Yes. There was a report made. At least those articles indicate there was a report made and I collaborated in the writing of them.

Q. And is that the report that was made at that time as printed on that page? [609]

A. In what way do you ask the question? A report to a meeting or to an individual?

Q. I only know what it is headed. It says "Report of Business Agents." I don't know to whom it was made unless you can tell me.

A. A report is usually made in the meeting to the membership as a part of our business meeting, which may later be put in the paper for the edification of our members who do not attend meetings.

Q. Well, was this a report that was made to a union meeting?

A. To the best of my recollection it was.

Q. And you collaborated in the preparation of the report?

A. Yes, sir, as business representative I did.

Mr. Riggs: I would like to offer in evidence page 3 of the Aero News of Friday, May 29, 1942, the two columns headed "Business Agents Report" and more particularly that part of it which is entitled "Wage Review."

Mr. Harrington: We object to the introduction of this as immaterial.

(Testimony of L. A. Perry.)

Trial Examiner Hektoen: How much more of this sort of thing do you have, Mr. Riggs?

Mr. Riggs: Very little from this witness.

Will you please mark this, Mr. Reporter?

(The document referred to was marked as Respondent's Exhibit No. 9 for identification.)

[610]

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked for identification as Respondent's Exhibit No. 9, was received in evidence.)

(Testimony of L. A. Perry.)

Mr. Riggs: In this report is stated, Mr. Perry: "All of the foregoing are union proceedings," referring to the wage review, "so what happens to the non-union man's case as it goes through the hurdles? You said it, it takes a hell of a beating as well as it should get dunked every time we get a poke at it before running it out on the scrap pile."

What did you mean and refer to in that paragraph?

Mr. Ryan: We object to that entire line.

Trial Examiner Hektoen: You have a continuing objection.

The Witness: Shall I answer that one?

Trial Examiner Hektoen: Yes.

The Witness: I believe the meaning there or the interpretation of it is fairly clear. At least to the best of my knowledge it is fairly clear and I don't believe that a further statement is necessary.

Mr. Riggs: That is all.

I will do the same with this, Mr. Examiner, as to the other—have the part I desire in evidence copied in typewriting and submit it instead of having the entire article in evidence. [611]

Redirect Examination

Q. (By Mr. Harrington) Mr. Perry, does this article not also state that it is the committeeman's duty to guard against wage rate inequalities among groups of workmen doing the same kind of work?

A. That is true.

Q. Does it mention anything any different be-

(Testimony of L. A. Perry.)

tween union members and others in that statement?

A. To the best of my knowledge it does not.

Q. Is this report here again an expression of your opinion?

A. Purely as an individual expressing his views.

Q. Is this column here entitled "Wage Review" a part of the business agents' report?

A. It is not a part of the business agent's report.

Mr. Riggs: Is that all?

Mr. Harrington: Just a minute—yes, I have no further questions.

Trial Examiner Hektoen: Inasmuch as you have offered the two columns I think the union will undoubtedly give you another one of these papers, if you ask for it. I think the whole thing should be in in this case.

Mr. Riggs: May we go off the record?

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record. [612]

Mr. Riggs: Just one more question.

Recross Examination

Q. (By Mr. Riggs) Who collaborated with you in reference to this article?

A. I don't recall.

Q. Mr. Wilkerson and Mr. Phillips as well as yourself?

A. That I wouldn't be able to testify to accurately because I don't recall any specific meet-

(Testimony of L. A. Perry.)

ing in general with him in which we set down our general views.

Usually we submit—each one submits—may I say it this way, each one submits their report and they are blended in together as under the column of “Business Agents Report.” That is the reason for the plural in there.

Mr. Riggs: That is all.

Redirect Examination

Q. (By Mr. Harrington) Is that your wording in that report, Mr. Perry?

A. The wording in the report, yes, except occasionally it is edited for grammatical errors and similar things.

Mr. Harrington: That is all.

Mr. Examiner, I move to strike this entire line of testimony as immaterial and irrelevant.

Trial Examiner Hektoen: The motion is denied. That is all, Mr. Perry.

(Witness excused.) [613]

Mr. Riggs: Mr. Shanahan.

WILLIAM M. SHANAHAN,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) I may have some of these

(Testimony of William M. Shanahan.)

things out of order, Mr. Shanahan, but I want to take up——

Trial Examiner Hektoen: First let us get the witness' name. Will you give your name to the reporter?

The Witness: William M. Shanahan.

Q. (By Mr. Riggs) An address?

A. 3344 Whittier Street, San Diego.

Q. Are you employed by Consolidated?

A. I am, as treasurer.

Q. How long have you been treasurer?

A. Five years.

Q. How large was your department when you first became treasurer five years ago?

A. About 60 people.

Q. And how many people are in your department today? A. About 400.

Q. Are they divided between Plant 1 and Plant 2?

A. Yes, sir; about 50-50 between each plant.

Q. And what do your employees consist of?

A. Accounting clerks, timekeepers, tabulating operators and [614] secretaries-stenographers.

Q. Do you know Mr. Barnes? A. Yes, sir.

Q. How long have you known Mr. Barnes?

A. About two years.

Q. Did Barnes ever make any request for transfer from the timekeeping division?

A. On three or four occasions Mr. Barnes made requests to us for a transfer, but never obtained a permit from the department to which he wanted to

(Testimony of William M. Shanahan.)

go that was either satisfactory to him or to the department. At any rate we had never been informed that any specific department would accept him.

Q. Did you have any conversations with Mr. Barnes with reference to his transfer?

A. Yes, I believe on two or three occasions I talked to him about his transfer and told him that we could not assist in any way until such time as he found a department in which to go to.

Q. Was anything said about somebody to replace his position?

A. That was a standing order, that no man would be transferred until such time as we had an adequate replacement.

Q. What was Mr. Barnes doing at that time?

A. He was a timekeeper

Q. How long does it take to train a timekeeper to perform the duties of the office? [615]

A. My estimate would be about three to six weeks?

Q. Well, were replacements for Mr. Barnes' position hired at any time?

A. On two occasions I remember very definitely of hiring two men to replace him because of an expressed desire for a transfer. On each occasion he didn't complete the transfer and it was necessary to place these replacements in other positions.

Q. Did he withdraw his request for a transfer?

A. No. They were never completed.

Q. Just left on the table to be completed by finding a department to which he could go?

(Testimony of William M. Shanahan.)

A. That is correct.

Q. Now, do you remember in a wage review board when the question of Mr. Barnes' transfer came up, and you said that his request for a transfer was not in writing and, therefore, it did not count—anything like that happen?

A. I believe that has been misconstrued. I think the language that was used, that he had never completed his transfer, he may have interpreted that as never having reduced it to writing. What we meant was that he never obtained a department that was acceptable to him.

Q. Did you make a statement at that meeting with Mr. Wilkins, Mr. Shanahan, Mr. Vernon, Mr. Bragg and Mr. Lafler—I think it was in April of this year, that you had never re- [616] fused a man a transfer out of the accounting department?

A. That is correct.

Q. Did you make that statement?

A. That is correct.

Q. Is that true, that you never have refused?

A. We have never refused a transfer with the qualification that we would only consent to a transfer as and when we had a replacement—that is, we could not release him from his duties until such time as we had someone to take his place.

Q. And that wage review—after that wage review did Mr. Barnes again request a transfer?

A. He did, and it was granted.

Q. And where is he now?

(Testimony of William M. Shanahan.)

A. I believe in the tooling and methods department.

Q. Well, is there anything more about this Barnes matter that you want to say, Mr. Shanahan?

A. I think the only thing to say is that when the transfer was put in proper form it was expedited and he was permitted to go to the department he had selected.

Q. And after you had obtained somebody to replace him?

A. We had a man available as a replacement at the time he put in his request.

As a matter of fact I made special provision to see that the man was reserved to be put in Mr. Barnes' place so there would not be any holdup. [617]

Q. Do you know Mr. Shannon? A. I do.

Q. How long has Mr. Shannon been representing the union as a committeeman?

A. Since about April, 1942.

Q. Have you had talks with Mr. Shannon with reference to various proposed wage increases?

A. Only had one discussion with Mr. Shannon as to a wage increase outside of the wage review board.

Q. Where was that and what was it and when?

A. That was, I think, about sometime in June of 1942. We were discussing the rate increase proposed for Mr. Kreutzcamp.

Q. And Mason?

A. No, there was no discussion with Mr. Shannon about Mr. Mason. Mr. Mason's case was handled

(Testimony of William M. Shanahan.)
by the master board.

Q. Well, what was the case of Kreutzcamp? Will you tell the Examiner what it was all about?

A. In the April wage review all members who were considered by the April wage review were referred to the master board and only two cases accepted by the shop committeeman. One was Kreutzcamp and the other one was Mason.

Q. How much had been recommended by Kreutzcamp's foreman?

A. An increase of 7 cents was recommended for both Mason and Kreutzcamp. [618]

Q. Do you know whether or not they were members of the union?

A. I understand from the committeeman that they were not, although I have no information on that subject.

Q. Well, were there other men recommended for increase on that same list?

A. I would estimate there were about 30 other men.

Q. And what increases were recommended for them?

A. From 7 to 11 cents an hour.

Q. What happened to those cases, including Mr. Kreutzcamp?

A. All cases except Kreutzcamp and Mason were sent to the master board and later Mason's case was referred to the master board by the industrial relations department because of the apparent discrimination.

(Testimony of William M. Shanahan.)

Q. The cases that were sent—why were the cases sent to the master board? Because there was a difference between the company's representatives and the union's representatives as to what the increase should be?

A. That is right; we were recommending from 7 to 11 cents and the union was asking from 20 to 40 cents an hour.

Q. And they asked from 20 to 40 cents an hour increase over that proposed for all persons on the list except Mason and Kreutzcamp; is that right?

A. That is correct. In the case of Mason and Kreutzcamp they accepted 7 cents an hour for each of those men. [619]

Q. And that was the initial recommendation of the foremen, was it? A. Correct.

Q. Now, after the decision of the master wage board, as you call it, what happened to the men's cases that went up there?

A. The men who were performing the same duties and who had the same experience and were of the same ability as Mr. Kreutzcamp and Mr. Mason, were given from 7 to 11 cents an hour increase.

When that became apparent we asked the committeeman to approve a merit increase for Mr. Kreutzcamp to 11 cents an hour which would make his increase and his rate of pay comparable to the rate we were paying three other men performing substantially the same work.

Q. So that as I understand you, the increase that you desired to get for Mr. Kreutzcamp was to

(Testimony of William M. Shanahan.)

equalize for him what had been given to people performing the same duties that had been given by the master board upon the appeal?

A. That is correct, and the change of status slips submitted to the committeeman contained those words, "To equalize wages."

Q. Was that the occasion—that was in order to prevent people from doing the same work being paid a different price?

A. That is correct. [620]

Q. Was that the subject of the conversation with Mr. Shannon?

A. Yes. He came to my office and said that he refused to sign—refused to approve the change of status slips until such time as I granted comparable increases to union men, stating that Mr. Kreutzcamp was not a union man and, therefore, he would not approve the increase until such time as we made similar adjustments for union members.

Q. And that would mean an additional 3 or 4 cents an hour for the union members?

A. There was no limitation as to the amount.

Q. If you granted an additional increase to the union members as the price of getting Mr. Kreutzcamp increased, it would have resulted in further inequality, wouldn't it?

A. Correct.

Q. Did you tell Mr. Shannon that you wanted him to sign that on the spot or the next day or within any particular period of time?

A. I told him he could either sign it or I would send it to arbitration. I told him that his conduct in saying that he would not approve an increase

(Testimony of William M. Shanahan.)

for non-union men was contrary to the spirit of the agreement, the labor agreement, and contrary to the spirit of the entire National Labor Relations Act.

Q. And did you say anything about your experience with other [621] committeemen in your department?

A. We have had a very fine experience with the other committeemen in the department. As a matter of fact it is my recollection that with the five other committeemen that we have had in the department, we have had only perhaps about 10 cases go to the master board out of about 125 reviews.

Q. Did Mr. Shannon—what did Mr. Shannon say with reference to your suggestion that the matter of Mr. Kreutzcamp be referred to arbitration?

A. Well, he apparently didn't understand that procedure at all.

Trial Examiner Hektoen: What did he say?

Mr. Harrington: I object.

The Witness: He made no response.

Mr. Harrington: I move that that answer preceding the last one be stricken.

Trial Examiner Hektoen: Strike it out. [622]

Q. Did you have a conversation with Mr. Shannon in April in the ante-room just off the wage review board, prior to entering the room?

A. I don't recall any such conversation. The only conversation I had with him in April that I have any recollection of was about an article which appeared in the Aero News, which, in substance,

(Testimony of William M. Shanahan.)

accused me of rubbing vanishing cream on committeemen and making them vanish.

Q. Do you remember a conversation with him in April, outside the wage review board, where you said: "What do you want to be in this thing for? I have had you older men in the timekeeping department in line for advancement, and you know you are sacrificing your chance for advancement."

Did you ever have such a conversation?

A. There was no such conversation, and that would be contrary to our rating sheets which showed Mr. Shannon not to be above an average timekeeper.

Q. Was he one of the older men of the department? A. One of the older men, yes.

Q. In May, did you have a conversation with him about a list of men, up for wage review at that time?

A. No, sir, there was no conversation in May. In the May review I was late getting to Plant 2 and the wage review had already started before I arrived.

Q. Did you have a conversation with him at any time in May, [623] or any other time, when you suggested you went into the wage review board and that you bickered and argued and that you could eliminate that right thore and agree on the increases?

A. At the conclusion of one of the wage reviews I told him his apparent effort was to cause dissatisfaction and not to attempt to really wage review individuals, and that he never made any really honest attempt to suggest rates that might have been agreed upon.

(Testimony of William M. Shanahan.)

Q. Did you say anything more to him than that?

A. That is all.

Q. What did he say to that?

A. His reply was that he was instructed by the union to ask those wage increases.

Q. Did you ever have any conversation with Mr. Shannon in which you talked about Barnes and Blake and Al May, timekeepers that had been shifted around?

A. No such conversations, no.

Q. Did you ever have any other conversations with him about wage reviews?

A. Not to my knowledge, no.

Q. Did he come into your office occasionally?

A. Never came to my office except on one occasion to discuss the case of Kreutzchamp.

Q. Did you ever see him between wage review meetings?

A. Perhaps once or twice on the street between the adminis- [624] tration building and the plant, but never to speak with him.

Q. So that your acquaintanceship with him consisted of meeting him in wage review boards and on this occasion when he called at your office about Kreutzchamp?

A. That is correct.

Q. Did you ever have any conversation with him out in front of the building where you told him that he was to stay out of the tabulating and auditing departments?

A. No, that conversation was before the wage review board. I suggested before he went to the tabulating room and into the accounting room that

(Testimony of William M. Shanahan.)

he contact the foreman before going to the individual members, so that they would know on what mission he was there, which was in accordance with the regular procedure followed in all other conferences, where one man goes from one department to another.

And it is my recollection that the other members of the wage board cautioned him to so do, to follow precisely that arrangement, because in other instances where it hadn't been followed, it caused difficulty.

Q. Now, the April list, I think you said it was, that all the projected increases went to the master board except Kreutzcham and Mason. Is that correct? A. That is true.

Q. It was the April list? A. Yes. [625]

Q. What happened to the May list of proposed wage increases?

A. I think about 75 per cent of those went to the master board and all on the June list went. Perhaps it would be interesting to note that Mr. Shannon agreed with three increases represented on the June list, and appealed those three, in order not to spoil his record.

Mr. Harrington: I move to strike that as a voluntary statement.

Trial Examiner Hektoen: Stricken.

Q. (By Mr. Riggs) How many on the June list were approved by Mr. Shannon? A. None.

Q. You say about 75 per cent went to the master board of that list? A. That's the May list.

Q. The May list. I beg your pardon.

(Testimony of William M. Shanahan.)

A. That is right.

Q. What happened to the other 25 per cent?

A. They were accepted.

Q. Upon the foreman's recommendation, or upon the increase proposed in the wage review board?

A. Most upon the foreman's recommendation. One or two were negotiated.

Q. Were all on the May list union men or non-union men?

A. I have no information on that, sir. [626]

Q. Now, the June list, how many went to the master board? A. The entire list.

Q. Were there any on the June list that were approved by Mr. Shannon? A. None.

Q. What happened to the proposed list in June?

A. I think it is now before the master board, or has recently come down to the master board.

Q. In the June list did Mr. Shannon propose increases for every man on the list above those proposed by the foremen? A. That is correct.

Q. In the July review, do you recollect that?

A. I do.

Q. How many were there on that list, if you can recollect? A. About 35.

Q. Tell what happened to that.

A. That entire list was sent to the master board.

Q. Mr. Shannon didn't agree to any—

Mr. Ryan: I object to that.

Q. (By Mr. Riggs) Did Mr. Shannon agree to any on that list?

Mr. Ryan: I object to these leading questions.

(Testimony of William M. Shanahan.)

Trial Examiner Hektoen: Read the question.

(The question was read.)

Trial Examiner Hektoen: Sustained. [627]

Q. (By Mr. Riggs) Did Mr. Shannon agree to any on the July list?

Mr. Ryan: I think that is still a leading question.

Trial Examiner Hektoen: No, I don't think so.

The Witness: He did not.

Q. (By Mr. Riggs) What did he say in regard to the people on the July list?

A. We would take up the names one by one with my recommendation as to the amount of increase, and he would invariably ask for approximately twice what we recommended, and showed no signs——

Mr. Ryan: I believe——

Mr. Riggs: Never mind.

Mr. Ryan: I am sorry. I didn't know you weren't through. Go ahead and finish.

The Witness: Will you read that last?

(The answer was read.)

The Witness: ——receding from this demand, and therefore, there was no point to attempting to negotiate further on each individual man.

Mr. Ryan: Mr. Examiner,——

Q. (By Mr. Riggs) Did they go to the master board? A. That is correct.

Mr. Ryan: Mr. Examiner, we are objecting to this line of questioning on the ground it is immaterial and irrelevant, [628] and has no bearing on the issues in this case.

(Testimony of William M. Shanahan.)

Trial Examiner Hektoen: You have a standing objection.

Q. (By Mr. Riggs) Have there been any other wage review lists in which Mr. Shannon has been interested, since July?

A. We have a list in August.

Q. How many were there on that?

A. About 16 or 18.

Q. What happened to that list?

A. Most of those were sent to the master board also.

Q. Were there any on that list not sent to the master board? A. I believe not.

Q. What increases, if any, did Mr. Shannon ask for the people on that list?

A. Our general increase was about 8 cents an hour, and he was asking for about 15 to 20 cents an hour.

Q. Did he ask that with respect to all people on the list or half of them, or the majority of them?

A. The majority of them.

Q. Did you have a conversation with Mr. Shannon at any time in which you told him he was treading on thin ice and you could make trouble for him and probably get him removed as committeeman?

A. I had no such conversation.

Q. Did you ever present to him a signed statement that he had been in the tabulating department trying to coerce men [629] into joining the union?

A. There is no signed statement in existence.

(Testimony of William M. Shanahan.)

Q. Did you ever present him a statement and ask him to sign it? A. I did not.

Q. Have you explained all that you want to say with reference to his going in and out of the tabulating department?

A. There was a report came to me that he had gone to the tabulating operators and said: "If you don't join the union you won't get an increase, and I——"

Mr. Harrington: I object to that.

Trial Examiner Hektoen: You may continue. And you what?

The Witness: I attempted to get somebody who would definitely make the accusation, so that we could submit it to the industrial relations department, and no one was willing to make the statement in writing, so we abandoned the investigation.

Q. (By Mr. Riggs) In the conversation in your office about Kreutzchamp, have you given us the entire substance of what was said on both sides?

A. I have.

Q. How long did it last?

A. 15 minutes, I would say.

Q. Did you tell him to go home and look at himself in the [630] mirror?

A. I told him to go home and reflect upon his conduct, and see whether he could in conscience continue his course of conduct that was causing difficulties in the plant.

Q. Did you say you couldn't deal with him and you couldn't get together? A. That is correct.

(Testimony of William M. Shanahan.)

Q. Did you say: "You are the only committee-man that takes all these cases up to the master board"? A. That is correct.

Q. Did you state to him: "Drop the whole thing or get out of the department"?

A. I did not. It wasn't within his province to drop them, so it would have been a useless statement.

Q. Do you remember the specific names of Butler, Demaree, and Mathes?

A. I don't remember their initials.

Q. Do you remember the last names of these three men? A. Correct.

Q. What list were they on?

A. I believe they were either on the April or May list.

Q. Do you remember how much the foreman had recommended for an increase for those three men?

A. I think 8 cents each. I am not sure.

Q. Do you recall what Mr. Shannon requested for them? [631]

A. Requested 30 cents for one of them and 20 cents for another. I think for one of them he requested 30 cents, and 20 cents for each of the other two.

Q. What happened to those cases?

A. They were sent to the master board and I think awarded 10 cents.

Q. Was that award in the line of what was being offered by other departments and accepted?

A. I think it was a cent or two higher than what was being awarded to other departments.

(Testimony of William M. Shanahan.)

Q. Do you remember a man in your department named Hardman? A. I do.

Q. What was his full name?

A. I don't know what his first name is.

Q. Was there a time when he wanted to be transferred to some other department?

A. He didn't want to be transferred, but he was an unsatisfactory timekeeper, and we told him he would either have to seek a transfer or be terminated.

Q. Did he seek a transfer? A. He did.

Q. What happened to him?

A. He was transferred to the materials department, I believe.

Q. What is the practice with reference to transferring of an employee? [632]

A. The man makes a formal transfer to the personnel department indicating his desire to go into a specified department. The personnel department determines from the foreman of the indicated department whether that foreman will accept the transfer, and if he will, then the request for transfer is sent through to the foreman of the department in which the man is presently working.

Q. In the case of a transfer, what is the rule with reference to the foreman who makes the recommendation, as to the rate of increase when the rate review comes up?

A. A man that is in the process of being transferred during a wage review, is reviewed either in the department from which he was going, or in the

(Testimony of William M. Shanahan.)

department to which he was going on the date he is scheduled for review.

Q. I don't think I quite understand you. Do you mean, after the transfer takes place the foreman in the department to which he has been transferred makes the recommendation?

A. That is correct.

Q. And does the department from which he has been transferred have anything to do with the recommendation? A. They do not.

Q. Did you have any talks with Mr. Hardman about any special merit increases either before or after his transfer?

A. Mr. Hardman arranged to transfer, which was to take place in about two weeks. During the two weeks' interval he came to [633] me and requested me to arrange with the wage review board to have his case considered as a special case, to which I replied that I had no authority to do that, and I was sure they wouldn't consider it, because they—if they did, it would just delay the entire program.

Q. How many times did you talk about it with Mr. Hardman? A. Three times.

Q. What did you say in the final interview with respect to whether your department would recommend the increase or whether he was to wait until he got to the new department to have that department recommend him?

A. I told him the plan adopted by the company and the union was that the man would be considered by the wage review board on the date he

(Testimony of William M. Shanahan.)

was scheduled in for wage review, and if on that date he was a member of department 2, he would be considered. If not, he would be considered in Department 8, I think that was the department to which he was going.

Q. Do you know Mr. Condon? A. I do.

Q. Do you remember having an interview with Mr. Condon during the four days he said he was shop committeeman?

A. I had an interview with him on the last day that he was a shop committeeman.

Q. Tell us what that interview was. What was said?

A. He came to see me about Mr. Hardman's case and I had [634] not been informed that he was a committeeman. And I said, "Why are you interested in it?"

Then he informed me he had been appointed temporary chairman, and I said it was somewhat strange; "You are leaving the department tomorrow morning, therefore it is sort of useless to take up matters of this kind, because you won't have time to complete any arrangements that might have been discussed;" with which I think Mr. Condon agreed.

However, in order that there would be no misunderstanding, I explained to him that Hardman's claim for special wage review was not within my power to grant, and I suggested inasmuch as it was going to be something that would run over a couple or three weeks, he leave the entire matter for his successor, who was to be appointed the following day.

Q. Did you say anything to him about Mr. Hard-

(Testimony of William M. Shanahan.)

man bothering you about the matter and you weren't going to be bothered any more?

A. I told him Mr. Hardman had been in to see me three times, and he knew as well as I did the wage review had to be conducted on the date scheduled, and there was no point in going into the matter any further.

Q. Did you say anything about terminating Mr. Hardman?

A. I told Mr. Condon if we would grant Mr. Hardman a wage review, the foreman to which he was being transferred would undoubtedly refuse to accept the transfer, and we would be [635] compelled to terminate Mr. Hardman.

For example, if the foreman to whom Mr. Hardman was going agreed to accept him at 80 cents an hour and he suddenly realized he had a 90 cents an hour man, he may refuse to accept him because it would cause conflicts in the new department.

Q. Had you told Mr. Hardman on those three occasions that he was an unsatisfactory timekeeper?

A. No, he told me he was an unsatisfactory timekeeper, the first time he asked to see me.

Q. Did you tell him at that time that unless he succeeded in completing the transfer you might terminate him?

A. I think he had a very definite understanding, unless he obtained the transfer it would be necessary for us to terminate him.

Q. You say you think he did understand that? Did you say that to him?

(Testimony of William M. Shanahan.)

A. He was told very definitely that would be the procedure.

Q. Do you know Mr. Blake? A. I do.

Q. Was Mr. Blake timekeeper from May to October 1941?

A. He was. He held the title; he wasn't a timekeeper.

Mr. Harrington: I move to strike that last remark.

Trial Examiner Hektoen: It may be stricken.

Q. (By Mr. Riggs) Was he in your department at that time? [636] A. He was.

Q. What are the duties of a timekeeper?

A. To verify the attendance of men in the shop and to ascertain the work that they are performing each hour of the day.

Q. How many times does the timekeeper visit the men upon whom he is checking?

A. From four to eight times a day.

Q. How many employees does each timekeeper check? A. About from 100 to 150.

Q. How many employees were there under Mr. Blake that he was to check?

A. Approximately 125.

Q. Where were they?

A. In the hull department.

Q. Where was that department?

A. It was located in Building 1.

Q. At the home plant?

A. In the home plant.

Q. Was that the building which is nearest to Lindbergh Field?

(Testimony of William M. Shanahan.)

A. It is the building in which the offices are located.

Q. The building in which the offices are located. What was the nature of the employment of these people who were under him as timekeeper? [637]

A. They were hull assemblers.

Q. Were they all in one place in the same building?

A. Within a relatively small area.

Q. Did Mr. Blake attend to his work regularly?

A. He did until about May of 1941 when he was appointed on a negotiating committee—appointed on a committee to negotiate a new labor agreement.

Q. What happened then?

A. Those negotiations were carried on and culminated in the agreement, I think dated June 12, 1941.

Q. Was that dated retroactively? I mean, was the agreement concluded and signed on the 12th of June, or was it reached some time later and dated back to the 12th of June?

A. I believe it was signed on the 12th of June and subsequently amended late in October.

Q. During this period from May to October what would you say with reference to Mr. Blake's attendance?

A. His attendance was very irregular. Sometimes he would attend a few hours each day and for weeks he would be on other assignments and not appear at all.

(Testimony of William M. Shanahan.)

Q. What happened? A. Pardon?

Q. Did you have any discussion about Mr. Blake with Messrs. Felton and Chudleigh?

A. Yes, I told Chudleigh and Felton that the arrangement in regard to Blake was somewhat unsatisfactory and that if [638] he were to continue on the negotiating committee, we would have to assign him temporary tasks; it was not practicable to have a timekeeper work only a few days a week or a few hours a day. [639]

Q. What did Messrs. Chudleigh and Felton say with reference to that?

A. They agreed that that was true and it would be perfectly in order to assign Mr. Blake temporary duties. Their particular interest was to have Mr. Blake available for work on the negotiating committee.

Q. Did you assign him to temporary duties?

A. I did.

Q. Now, was there a time—do you remember having a conversation with Mr. Felton at one time about Mr. Blake being given a leave of absence to attend to his duties with the union?

A. All such conversations relative to leaves of absence would have to be with the industrial relations department.

Q. Well, did you have a conversation with Mr. Felton that you recall, with reference to it when he asked you for 30 days leave of absence, I think it was?

(Testimony of William M. Shanahan.)

A. I don't recall any such conversation.

Q. Did Mr. Blake get a leave of absence to act as financial secretary of the union?

A. I believe the explanation of that is that Mr. Blake——

Trial Examiner Hektoen: Wait a minute. Did he?

The Witness: (No response.)

Trial Examiner Hektoen: Read the question.

(Question read.) [640]

The Witness: He did not get a leave of absence to act as financial secretary.

Trial Examiner Hektoen: All right, let us have another question.

Q. (By Mr. Riggs): What did he get?

A. He got a leave of absence to work for the union up until such time as he was formally elected as financial secretary and then he was given a permanent leave.

Q. Now, Mr. Blake testified here at one time that he was assigned to work in the vault where he was kept away from contact with other employees. What would you say with reference to that?

A. I would say that that is highly improbable because there is no working space in the vault.

Trial Examiner Hektoen: Now, wait a minute.

Q. (By Mr. Riggs): Did you ever assign him to work in the vault? A. I did not.

Q. Do you know whether Mr. Vernon did?

A. I am sure he didn't because I make frequent

(Testimony of William M. Shanahan.)

trips to the vault and I would have found Mr. Blake in the vault working and would have immediately ordered him out.

Q. Are there any desks in the vault?

A. There are no desks there.

Q. Mr. Blake—was Mr. Blake subsequently transferred [641] to the time audit crew at the Parts Plant? A. That is correct.

Q. Had you had any talk with him previous to his transfer?

A. On two or three occasions Mr. Blake requested me to give him duties which would enable him to get some auditing experience, and to eventually transfer into the accounting department, and he was assigned to the time audit division in preparation for, or in anticipation of eventually being transferred into the accounting department.

Q. Well, after he was transferred to the Parts Plant what duties was he engaged in?

A. He was engaged in the verifying of the time worked by the individual employees from their clock cards.

Q. Did he have anything to do with the compiling of records of assignments of salaries—assignments of wages for union dues?

A. I think that was all done before he was transferred to the Parts Plant.

Q. Did Mr. Blake protest about his transfer to the Parts Plant?

A. He did not. We discussed it very fully and

(Testimony of William M. Shanahan.)

I told him exactly what the situation was and he accepted it.

Q. Can you give us those discussions a little bit more in detail—the substance of them?

A. As I recall the substance was that Mr. Blake was a candi- [642] date for financial secretary and he was in a run-off election, in which he didn't know whether he would be successful or not, and if he was successful, of course, he would take a permanent leave. If not, he wanted to come into the accounting department.

We said pending the time—pending the outcome of the election he should go into the time audit division and whatever experience he gained there would be useful in his work as a financial secretary.

Q. Did he object to that?

A. He did not.

Q. After that transfer had been made did Mr. Blake visit at your home?

A. He did on three occasions. He came to my home twice by himself and once with a young lady whom he introduced to me and my family as his fiancée.

Q. You are on friendly terms with him—you were at that time?

A. I was and I still am. Mr. Blake on several occasions has called me and discussed various accounting features of his present job.

Q. And have you given him advice when he

(Testimony of William M. Shanahan.)

called you on the phone with reference to his present job? A. I did.

Q. Did you transfer Mr. Blake on any of these occasions in [643] order to prevent him from doing legitimate work as shop committeeman?

A. I did not.

Mr Ryan: I object to that as calling for a conclusion.

Trial Examiner Hektoen: It may stand.

Mr. Riggs: That is all.

Trial Examiner Hektoen: We will have a short recess.

(A short recess was had.)

Trial Examiner Hektoen: We will be in order. Do you have another question?

Mr. Riggs: Yes.

Q. (By Mr. Riggs): Mr. Shanahan, is there anything you want to correct in your statement before the recess?

A. Yes. Upon conferring with my assistant, Mr. Vernon, I learned that Mr. Blake did spend approximately two days in the vault filing some requisitions, or overtime authorizations, instead of requisitions.

Q. Had a desk been put in there for him?

A. Just a small table. I had no knowledge of him having been in the vault during that period.

Trial Examiner Hektoen: All right, Mr. Harrington.

(Testimony of William M. Shanahan.)

Cross Examination

By Mr. Harrington:

Q. Mr. Shanahan, did you immediately before getting on the stand, read the transcript as it pertains to your testimony? [644]

A. Parts of it. Did you say my testimony?

Q. The testimony as it pertained to you?

A. Just parts of it.

Q. When did Barnes make his three or four requests for transfers?

A. I think over a period of about 15 months.

Q. When was the last one with respect to his transfer?

A. In April—the first one was in—well, strike that, please. The last was in April, 1942, and the first one was about January, 1941.

Q. Were any of Barnes' requests for transfer ever completed?

A. I have no recollection of any except the last one which was carried through.

Q. Did Barnes request a transfer after this wage review? A. Yes.

Q. Who did he request it from?

A. Personnel department.

Q. Who in the personnel department, do you know?

A. I really can't answer that.

Q. How did you know that Mason and Kreutzcamp were not union men?

A. The committeeman informed me.

Q. On that list that they were on, I believe you stated there was about 30 men on the list?

(Testimony of William M. Shanahan.)

A. That is correct. [645]

Q. And did the work of Mason and Kreutzcamp differ from the work of those 30 other men?

A. Not materially, no.

Q. And what was their rate of pay in relation to those 30 other men?

A. About the same.

Q. Who initiated the suggestion that Kreutzcamp be brought up to the rate that you say the union men received?

A. Mr. Kreutzcamp himself made a formal request that his case be reconsidered.

Q. Who was the request made to?

A. To me.

Q. And then what did you do with that request?

A. I sent it back to his supervisor for a recommendation and the supervisor recommended that the wages be equalized, which I did.

Q. Did I understand you to say that Kreutzcamp's work was substantially of the same type as that of the union men on the list?

A. That is correct.

Q. And was his rate of pay substantially the same also?

A. Well, there are some differences in the rates of the older men who were doing timekeeping.

Q. Was Kreutzcamp an older or newer man?

A. He was a newer man. [646]

Q. And the other men on the list were older men than he was?

A. No. There are probably 80 per cent of them that had about the same service as Kreutzcamp

(Testimony of William M. Shanahan.)

and the other 20 per cent were men who had been with the company two or three years.

Q. You stated that at the conclusion of one wage review you told Shannon that he never made any real, honest attempt at wage increases.

A. I told him in my opinion he made no honest attempt to conduct the wage review board as it should be conducted.

Q. That was your opinion?

A. That is correct.

Q. You stated that about 75 per cent of the men on the May list went to the master board and that men on the June and July lists went to the master board also? A. That is correct.

Q. Well, was there anything wrong in those lists going to the master board? What was the master board set up for?

A. The master board was set up to consider all cases where the department head and the union representatives disagreed.

Q. And didn't that represent a disagreement?

A. That is correct. Although it was never intended that the master board should be substituted for the wage review [647] board. You were supposed to negotiate and settle the wages in the lower board.

Q. Is it your opinion that Shannon must agree on those lists, as you see them?

A. No, but I believe that the willingness to negotiate and consider the merit of each man would be reflected in a more nearly—in a reasonable re-

(Testimony of William M. Shanahan.)

quest for increase than was made by Mr. Shannon.

The *modus operandi* in the master board is to say "How much does the foreman recommend?" and I would say "7 cents," and then they say, "How much does the union recommend?" and he would say "35 cents."

Q. Well, do you know what he would base his recommendation on? A. I do not, no.

Q. Were the wage increases in Shannon's group usually higher than those in other groups?

A. I think as they passed the master board they were on a general level with everything that passed the master board and that has more or less set the pattern for all subsequent increases.

Q. On the transfer procedure, when men transfer from one department to another, what did you state the department was that he reviewed in?

A. He is reviewed as of the date he is scheduled, regard- [648] less of the department in which he is working.

Q. Well, how does a foreman of a department a man is going into know enough about his ability to intelligently make any recommendations as to the man?

A. He reviews the man's record. A man's record passes from one department to another and if he has any—if he isn't acquainted with the man's abilities he is required to go to the former foreman and ascertain the man's abilities.

On the transfer sheet the foreman of the de-

(Testimony of William M. Shanahan.)

partment from which the man is transferred must express an opinion as to the man's ability.

Q. When Blake was timekeeping how often a day were the men checked by the timekeeper?

A. Well, I would say from four to eight times.

Q. At that time? A. At that time.

Q. In that conversation you testified you had with Shannon in the anteroom off of the wage review board, what did Shannon say?

A. That was the conversation relative to the publication?

Q. Well, you have testified to it. It was in the anteroom right outside of the wage review board.

A. The only conversation I had with him was relative to some article that appeared in the official union paper and relative to some difficulties or other, and I said that I was [649] curious to know where that originated.

It was represented in the article that there had been several complaints on the part of the committeemen and I asked him whether he had any complaint and he said, "No."

Q. Did he say anything else in that conversation?

A. I think that was the substance of the entire conversation.

Trial Examiner Hektoen: Is that the one that you are supposed to have had with him in April before the first wage review?

The Witness: I don't know as to the date. The

(Testimony of William M. Shanahan.)

only conversation I had with him was relative to a publication in the official union newspaper.

Q. (By Mr. Harrington): Did Shannon tell you that he was there representing the men and you shouldn't take it out on him?

A. There was no such statement made. There never was any attempt to take it out on him.

Q. I am asking you did he make that statement or any statement of that nature?

A. He did not, not to me.

Q. Did Shannon tell you that placing those two non-union men, giving them the rate you asked for, would create an inequality in rates between them and men doing comparable work? [650]

A. He did not.

Q. Men of equal ability?

A. That would not have been true.

Q. Well, did he say that?

A. No, he did not.

Q. Were the wage increases requested by Shannon invariably higher than those recommended by you?

A. I would say at least 100 per cent higher.

Q. Is that one of your criticisms of Shannon?

A. No. I have no criticism. That is negotiation and there is no criticism of his method of negotiation except that I feel that that isn't the spirit—that that isn't the intention of the wage board, to just go through a sham. You are really

(Testimony of William M. Shanahan.)

supposed to go in there and attempt to settle the wages. At least, that is what we accomplish with the five other committeemen.

Mr. Harrington: I have no further questions.

Mr. Riggs: That is all.

Trial Examiner Hektoen: That is all, Mr. Shanahan. Thank you.

(Witness excused.) [651]

A. A. VERNON,

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Riggs:

Q. Your full name and address, please?

A. A. A. Vernon, 3555 Quimby Street.

Q. Are you employed by Consolidated Aircraft Corporation? A. Yes, sir.

Q. In what capacity?

A. Senior chief timekeeper.

Q. What department?

A. Department 2.

Q. Who is head of that department?

A. Mr. Shanahan.

Q. How many timekeepers do you have under you?

(Testimony of A. A. Vernon.)

A. There are approximately 80 on the day shift at plant 1, and about 6 on the other crew.

Q. Are there any timekeepers in the plant not under your jurisdiction? A. No.

Q. All the timekeepers are under you and the treasurer's department? A. Yes, sir. [652]

Trial Examiner Hektoen: You only mentioned Plant 1. Are they all in plant 1?

The Witness: No, there are similar ones in Plant 2.

Trial Examiner Hektoen: I see. About 160 altogether?

The Witness: Yes.

Q. (By Mr. Riggs): Is there a night chief timekeeper? A. Yes, sir.

Q. Is the night chief timekeeper under you?

A. No. He, on any questions that he wants help on; he does, on routine procedure, he takes care of himself.

Q. Do you know Mr. Blake?

A. Yes, sir.

Q. When did he first come into your department?

A. I have forgotten the date. It's a considerable length of time. He was hired by the company I believe in Department 8, and requested a transfer into our department.

Q. Do you recall when he became a union committeeman?

A. Shortly after he came into our department, I believe.

(Testimony of A. A. Vernon.)

Mr. Riggs: Mr. Vernon.

Q. Can you fix the time at all?

A. I don't believe I could without looking at the records.

Q. How long a time did he act as a union committeeman?

A. Well, soon after he came into the department I believe he was appointed by the timekeepers and continued in that capacity.

Q. Where was his home station? [653]

A. In the hull department.

Q. When he was not in checking, what I mean by that is: When he was not checking the employees, whom he was supposed to check on, where did he spend his time?

A. I suppose at his desk in the hull department.

Q. Where was your desk?

A. Adjacent to the accounting department.

Q. How far away from his?

A. The hull department was originally in Building 1; that would be maybe 250 feet away. Then they moved for a short time over to Building No. 4, which was several hundred feet.

Q. Was there a time when Mr. Blake was in your office? A. Yes.

Q. Tell us how that came about?

A. Well, Mr. Blake, because of other activities, was not able to give the time to his job that he would have to, in order to do the work satisfactorily, and he used to come to me considerably. He had to go here or there on union business, which

(Testimony of A. A. Vernon.)

meant that there was no one to do his work while he was gone, and it isn't a job a person can drop and pick up when he comes back. He has to be on the job constantly throughout the day to accomplish his job.

Q. Well, do you know anything about any telephone calls he received? [654]

A. Well, most of the time he was in the same office that I was, doing clerical work, sorting, and different things, and we only had one telephone there at that time, and he would seem to use the phone more than was necessary——

Mr. Ryan: I object to that as a conclusion of the witness, and move it be stricken from the record.

The Witness: I would like to go a little further on that.

Mr. Riggs: Wait a minute.

Trial Examiner Hektoen: All right. I will take your motion to strike under advisement.

Q. (By Mr. Riggs): When was it he came into your office?

A. To work on other than timekeeping duties?

Q. Yes. As I understand it, at one time he was timekeeper in the hull department with a desk in that department.

A. Yes, sir.

Q. And supposed to check the time of the men in that department. Is that right?

A. Yes, sir.

Q. There was a time when he was transferred

(Testimony of A. A. Vernon.)

from those duties, and he says he was in your office. Is that correct? A. Yes, sir.

Q. When did the change take place?

A. Several months after he was transferred in as a timekeeper. I cannot fix the exact date. [655]

Q. You transferred him into your office?

A. I did.

Q. You did? A. Yes.

Q. What was the reason for it?

A. Because of the duties and functions of a timekeeper, he has to be on his job to accomplish his work, and he can't be gone for two or three hours and come back and do that work then, because the time is past. That has been gone, and he can't go back and do it. That isn't the nature of it.

Q. When he was transferred to your office was there any loss of pay or seniority?

A. No, sir. The understanding, as I remember it, that I had with Blake was that as soon as he would be able to keep time and really be on the job he would go back to his former duties with no loss of seniority or change of pay, or anything.

Q. While he was in your office he was still a union shop committeeman? A. Yes.

Q. How much of his time, if you know, was taken up with the duties of that position?

A. Considerable; sometimes it would be several times a day and sometimes it would be half a day at a time, and it [656] varied in amount of time.

Q. What were the duties he was performing while he was in your office?

(Testimony of A. A. Vernon.)

A. He would do miscellaneous clerical duties, such as filing and sorting, something he could leave with no—wouldn't penalize the work, because that could be done later if he had to leave.

Q. Was there any time he was working in the vault?

A. Yes. He was in there one, two, three, four days.

Q. You asked him to perform duties there?

A. I did.

Q. What did you ask him to do?

A. He was doing the same kind of work, whatever it was, sorting requisitions or filing, or something.

Q. Did it have anything to do with union membership cards?

A. Not at that particular time, they weren't in there.

Q. Or dues deducting cards?

A. Not at that particular time. That work was performed, I believe, in the accounting department. I might say—do you care to have me tell why he was in the vault?

Q. Yes.

A. At that time, as we are now, although more pronounced then, everyone was very short of room, including ourselves, and in those days the desk space in our office, we had about five or six tables and desks all taken up by people already [657] using them. There was some space available in the vault, and we put a little table in there just in-

(Testimony of A. A. Vernon.)

side the door for him to have a place to work, as we did for two or three others at that time, because of the shortage of space.

Q. Was the vault ventilated and light?

A. It had the same lights we did. The ventilation at the back of the vault I don't think was very good. However, as I remember, he was right next to the entrance door.

Q. While in the vault did you tell him he couldn't use the telephone?

A. I don't remember I did at that particular time, although I did speak to him about using the telephone too much, because we only had one phone to transact company business on.

Mr. Ryan: I object to the statement "Too much" as a conclusion of the witness.

Trial Examiner Hektoen: It may stand.

Q. (By Mr. Riggs): As chief timekeeper, did you have occasion to receive calls from the timekeepers that were under you? A. Yes, sir.

Q. How frequently?

A. Well, we counted them one day on a little counter, and as I remember, we received almost 112 on that particular day.

Q. From the men under your jurisdiction? [658]

A. Mostly, and the clerks in the factory.

Q. When was Mr. Blake transferred to the parts department?

A. I would say that he had probably been working in our office approximately three to six weeks; something like that.

(Testimony of A. A. Vernon.)

Q. Was he transferred to the parts department at his request?

A. No. We needed, as I remember it, we needed a man up there to do some clerical work; it happened to be on the audit crew, and that was another job he could drop if he had to and somebody else could take it up.

Q. Did he ever tell you he wanted to get some auditing experience?

A. No, I don't recall it if he did.

Q. When he was transferred to the parts plant, was he on the same shift he had been on before?

A. Yes, sir.

Q. The day shift? A. Yes, sir.

Q. Who was his immediate superior there?

A. While he was on the audit crew it would be Mr. Dart.

Q. Dart? A. Dart, D-a-r-t.

Q. How long had Mr. Dart been in command of that crew?

A. Oh, a comparatively short time, not over a few months.

Q. Was he an auditor? [659]

A. Well, their work consisted of checking the timekeepers' work; he was an auditor to that extent.

Q. Did Mr. Blake lose any pay or seniority rights when he was transferred to the parts department? A. None whatever.

Q. How long did he stay there?

(Testimony of A. A. Vernon.)

A. I would say not more than three or four weeks.

Q. What become of him then?

A. I think he—about that time I think he started devoting full time to union activities, or shortly thereafter.

Mr. Riggs: I think that is all.

Cross Examination

Q. (By Mr. Harrington) How many times did the timekeepers check the men a day when Blake was timekeeping?

A. In his department they were supposed to be checked about four times a day.

Q. You stated on one day you checked the number of phone calls.

A. Yes, that is right.

Q. Had you checked that number of phone calls at any other day before or after?

A. No, the reason we checked the phone calls we only had one phone, and we were trying to convince the management we should have another phone, and that's why we happened to [660] check it.

Q. Just the one day's check?

A. That is all.

Q. Whose phone calls were they? What I want to know is: Are you attributing all those phone calls to Blake?

A. Oh, by no means.

Mr. Harrington: I have no further questions.

(Testimony of A. A. Vernon.)

Redirect Examination

Q. (By Mr. Riggs) As I understand it, the phone calls you refer to were business calls to you that you wanted to show how much you needed the phone for your own purposes? A. Yes, sir.

Q. When was it that plant office, Plant No. 1 was crowded?

A. It was over a long period of time.

Q. What time was this when Mr. Blake was in your office and you said, I believe, that there were five or six tables there and all of them were occupied? A. Yes, sir.

Q. Was that correct? A. Yes, sir.

Q. I want you to fix that time, if you can.

A. It's hard to remember all those dates. I don't think I could fix the time close enough to be of value in the testimony.

Q. All right. Well, now, was that congestion ever relieved [661] to some extent in Building No. 1?

A. Later, when they expanded and built more offices and production space.

Q. Was there a time when a large part of Department 2, the tabulators, and so forth, were removed to the parts plant? A. Yes, sir.

Q. Was that the time Mr. Blake was transferred?

A. No, that was very much later.

Q. Much later?

A. It was—the reason he was in the vault, the condition was so severe there was a certain amount

(Testimony of A. A. Vernon.)

of humor to it that helped out. There was jokes passed by everyone right along that you had to get to work early in the morning if you wanted to find desk space to work on.

Mr. Riggs: That is all.

Q. (By Trial Examiner Hektoen) When did you make the phone call check? Do you know?

A. I didn't fix, try to fix that in relation to when Blake was in the office.

Q. Before or after, or during?

A. I couldn't say that, but the same condition existed, approximately the same condition existed when Blake was in the office when we made the check.

Q. Did you get an extra phone eventually?

A. Eventually, yes. [662]

Q. After he left? A. I believe so.

Q. Are you sure?

A. Yes. I would say it was quite a bit later.

Q. Have you any idea how many phone calls he did make?

A. There would be phone calls come in, when I answered the phone, and would know about it, sometimes one or two, sometimes four or five a day. Of course, when they come in close together, actually, no one else could call in on account of it being busy, and it would be disturbing.

Q. Did he make a lot of outgoing calls?

A. He did until I asked him to stop, unless it was very necessary.

Q. About how many did he make?

(Testimony of A. A. Vernon.)

A. About the same number as incoming calls.

Q. One or two, or as high as five a day? I suppose that was rather rare?

A. I couldn't say exactly.

Q. Of course, you weren't watching him every minutes. After you asked him to "lay off," as it were, did he? A. Yes.

Trial Examiner Hektoen: I think in view of the subsequent testimony of the witness your motion to strike will be denied.

Anything more? [663]

Mr. Harrington: I have a further question.

Recross Examination

Q. (By Mr. Harrington) Did you know, when transferring Blake to the parts plant, that he was shop chairman in Plant No. 1, that is, chairman of the shop committeemen?

A. I didn't follow his activities very closely as to the union. I don't know that I really considered it at all. He was the timekeeper's committeeman, and later he advanced to the other position. I don't remember that.

Q. Did Blake ask you for the transfer back to Plant No. 1? A. No.

Q. He didn't? A. No.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: Thank you, Mr. Vernon.

(Witness excused.)

Mr. Riggs: That is all for today, sir.

Trial Examiner Hektoen: You had one or two other people called, and I think I see them here. Is there nothing else we could do now?

Mr. Riggs: I don't care about anybody else today. I will not call Mr. Condon or Mr. Barnes or Mr. Blake further.

Trial Examiner Hektoen: Well, so far we have had a very short session. There is absolutely nothing we could do further today? [664]

Mr. Riggs: No, sir. I have no other witnesses today.

Mr. Harrington: Could you let me know, Mr. Riggs, who you may need tomorrow?

Mr. Riggs: I don't think any of your people.

Trial Examiner Hektoen: Unless he lets you know, you will not be responsible for them.

We will adjourn until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:10 o'clock p.m., Friday, September 4, 1942, an adjournment was taken until 10:00 o'clock a.m. September 5, 1942.)

[665]

Conference Room

Chamber of Commerce Building

San Diego, California

Saturday, September 5, 1942 [666]

Trial Examiner Hektoen: We will be in order.

Mr. Riggs: I would like to recall Mr. Shannon.

EVERETT M. SHANNON

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Cross Examination (Continued)

Q. (By Mr. Riggs) Mr. Shannon, have you produced any list of employees in your department that were up before the wage board in April, May, June and July of this year? A. Yes, sir.

Q. Will you get the one in April?

A. I haven't them listed that way.

Q. What?

A. I haven't them listed that way.

Q. Have you got a list there of the names of men that were union men, that had been recommended for increases where you accepted the increase proposed by the foremen?

A. That is right.

Q. Will you give that to me?

A. Yes, sir. That's insofar as I can recall, sir. There would be others, but I am pretty sure those are the ones.

Q. Mr. Shannon produces a penciled list.

"I accepted these on Mr. Shannon's first offer."

[668]

Then follow the names of Davis, Gibbs, Carmona, Henley, Norton, Patterson, all with 8 cents apiece after their names; Hatchell, 7 cents; Cluen, Cundiff, Kukowski, Shannon, all with 8 cents apiece after their names.

(Testimony of Everett M. Shannon.)

Do you mean these were all the union men who were recommended by Mr. Shanahan for increases of a number of cents per hour put after their names? A. Yes, sir.

Q. Does this list extend from June or July, or one month only?

A. No, there is more than one month there. I don't know just which.

Q. This takes in all the men where you accepted Mr. Shanahan's first offer?

A. I wouldn't say that, no, sir. That is insofar as I can recall. There are a number not covered on either side as to that point.

Q. Were all these men union men?

A. Yes, sir.

Q. Were they union men prior to the time the rate increase was proposed? A. That is right.

Q. Or did you contact them after the rate increase was proposed?

A. No, sir, never. [669]

Q. Never contacted them? A. Never.

Q. I thought you said you went into the department—— A. Before, yes.

Q. Before—wait a minute. You and I don't understand each other. You told me after you got the proposed list of men whose wages were to be increased, you went into the department to contact them all. Is that correct?

A. That is right; that's before the review, sir.

Q. Before the review. And you contacted them

(Testimony of Everett M. Shannon.)

for the purpose of finding out whether they were union men or non-union men?

A. That's right, and their work abilities.

Q. And their work abilities, too?

A. That is right.

Q. How many times did you contact non-union men with reference to wage increases?

A. I contacted every man on my wage review list, union or non-union; there were very few non-union men to be contacted, because there were very few.

Q. You are aware that the contract contains a provision that the union agrees not to discriminate against non-union men? A. I am.

Q. Were you careful to observe that provision? [670] A. I was.

Mr. Riggs: That is all.

The Witness: You wanted another list, too.

Mr. Riggs: Yes. You have another?

A. You asked for a list of men that I brought down to Mr. Shanahan that night, those that were unequal that he wanted to grant, to Mr. Mason and Mr. Kreutzchamp.

Q. (By Mr. Riggs) Mr. Kreutzchamp was a non-union man? A. That is right.

Q. And he had obtained an increase of—

A. 7 cents.

Q. And on the same wage review he obtained his wage increase of 7 cents, there were a number of union men who obtained an increase of 11 cents, were there not?

(Testimony of Everett M. Shannon.)

A. I couldn't recall that. I do recall some at 7; some more than 7, and others 7 cents.

Q. Weren't there many union men who obtained 11 and 10 cents?

A. At that time in the reviews most of the new men were getting 7 cents.

Q. Answer my question: At the time Mr. Kreutzchamp's name came up in the wage review, were there not a number of union men who were advanced 11 cents an hour while Mr. Kreutzchamp was advanced 7 cents?

A. I would have to have my list, sir, to answer that. [671]

Q. You heard Mr. Shanahan testify to that yesterday? A. I was not here.

Q. Do you deny it? A. I was not here.

Mr. Riggs: I beg your pardon. I don't think that is material anyway.

Trial Examiner Hektoen: Is that all?

Mr. Riggs: Yes.

Trial Examiner Hektoen: Before you cross examine, tell me again exactly what your point is, Mr. Riggs.

Mr. Riggs: I am sorry that I haven't been able to make it clear.

Trial Examiner Hektoen: I have an idea, but I want to be absolutely sure.

Mr. Riggs: The union agreement contains a provision in Section 12: The company agrees not to intimidate or in any way discriminate against any employee because of union activities; the union

(Testimony of Everett M. Shannon.)

agrees not to intimidate or in any way discriminate against any employee not belonging to the union.

It seems to be in an accusation brought by the union, that the company is discriminating against union men, that it is equally relevant and important the company should be able to bring out that the union is discriminating against non-union men, contrary to the agreement.

Furthermore, in the absence of Congress having provided [672] in the National Labor Relations Act, the slightest opportunity for an employer to bring before the Board any violation of a union contract on the part of a labor union, it seems to me the ordinary provisions of equity with reference to coming into court with or without clean hands might be important in review in a court of law.

Trial Examiner Hektoen: I am dubious about that. The other day you said something about the situation having some bearing on Shanahan's possible statements. That is the main point.

Mr. Riggs: I think it is equally relevant with reference to that.

Trial Examiner Hektoen: All right. Then it is equally relevant to that. Now, we know what we are getting.

Redirect Examination

Q. (By Mr. Harrington) These lists, Mr. Shannon, do they show the comparative ability of men whose names are on the list, or what their present rate of pay is? A. Yes, sir.

Mr. Riggs: I object to the witness being inter-

(Testimony of Everett M. Shannon.)

rogated about a list I did not offer in evidence. It is not identified.

Trial Examiner Hektoen: Read the question.

(The question was read.)

Trial Examiner Hektoen: I do not get the objection. [673]

Mr. Riggs: I only referred to one list which I asked him to bring. He said these were the names of union men where he had accepted the first offer Mr. Shanahan had made. That was the list of names which I read into the record.

Trial Examiner Hektoen: Which you read into the record?

Mr. Riggs: The other list which he produced was a penciled list of men where wage increases had been recommended, which was not that particular point, and about which I asked him nothing, and which I did not offer into evidence.

Trial Examiner Hektoen: What is your point, Mr. Harrington?

Mr. Harrington: My understanding was Mr. Riggs had questioned him on both lists.

Trial Examiner Hektoen: I take it you did not on the second one?

Mr. Riggs: No, I did not.

Mr. Harrington: I am sorry, Mr. Riggs; I thought you had. I have no questions.

Trial Examiner Hektoen: Thank you, that is all, Mr. Shanahan.

(Witness excused.) [674]

DAVID GIRTON FLEET,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Give your full name and address, Mr. Fleet, to the stenographer.

A. David Girton Fleet.

Q. And your address?

A. 555 San Fernando. That is my San Diego address. Vultee Aircraft, Vultee Field, California, is my business address.

Q. When did you first become employed by the Consolidated, Mr. Fleet?

A. Well, I first became employed by Consolidated in 1926, but my employment wasn't continuous.

Q. Was that when the company was located in Buffalo? A. Yes.

Q. And off and on how long did your employment continue?

A. I had approximately ten years of employment with them—intermittently.

Q. Well, when you say "intermittently," were you engaged in other businesses from time to time?

A. I was away at school from 1926 until 1931. I worked summer vacations there and from 1931 to 1942 I worked continuously with the exception of two years, at which time I [675] worked for my father in his office, but I wasn't on the company payroll.

(Testimony of David Girton Fleet.)

Q. During that time will you state some of the positions that you held?

A. Well, I started as a rib maker in the wing department, worked in the welding department, oil treater. I worked in the final assembly as an assembly mechanic. I worked as a stock chaser in the production department. I worked in the service department as a service man and also as service manager. Later as a pilot for Fleet Aircraft, a wholly owned subsidiary and since about 1935 as assistant to the manager up until August 1st of this year.

Q. Are you now a director of the company?

A. I was a director from 1936 until 1942, August 1st.

Q. Have you any connection with the Consolidated at the present time? A. None.

Q. What is your present position?

A. Other than a stockholder. I am a stockholder.

Q. What is your present position?

A. I work for Vultee.

Q. In what capacity? A. Vice President.

Q. And general manager?

A. No, I don't have that title—executive vice present. [676]

Q. Is the office of the president occupied at the present time?

A. No, they do not have a president.

Q. During the time that you were assistant to

(Testimony of David Girton Fleet.)

the manager at Consolidated, were you acquainted with the company's labor relations?

A. Yes, indirectly, up until about the Spring of 1941 and quite intimately connected with it from then on.

Q. When did the company move its plant from Buffalo to San Diego? A. In 1935.

Q. Can you give us any idea of how many employees it had when it first came to San Diego?

A. We had approximately 300 when we came to San Diego.

Q. And how many had you had in Buffalo?

A. Well, our peak in Buffalo was in the neighborhood of 2200. We had gradually gone down and we picked out key men to bring down to San Diego.

Q. Did the company bring its key men to San Diego when it moved here?

A. It did. All that would come. Of course a great many preferred to remain in Buffalo due to the fact that Mr. Bell, who had been our general manager, decided to start an organization of his own and he formed what is now Bell Aircraft Corporation and a great many of Consolidated employees remain- [677] ed right there in their same capacities that they had with us.

Q. I think you said that in the beginning of the Spring of 1941 you became intimately connected with the company's relations with its employees?

A. Quite intimately.

Q. With the labor union?

A. Quite intimately, particularly after the 12th

(Testimony of David Girtton Fleet.)

of June, 1941 when an agreement was signed. I didn't enter into the negotiations leading up to that agreement, however.

Q. When did the negotiations begin—strike that out—off the record, will you?

There had been an agreement between the company and Aircraft Lodge No. 1125 that was negotiated some time in 1939?

A. I will say "Yes," because I believe so, but I wasn't connected with the labor relations at that time.

Q. Well, did negotiations begin in the Spring of 1941 with reference to the new agreement?

A. Yes, that is correct.

Q. Did you take part in those negotiations?

A. I did not.

Q. Do you know how long they lasted?

A. I believe they lasted for a period of two months, approximately. [678]

Q. Did they result in the signing of an agreement on June 12, which has been put in evidence—I think it is Board's Exhibit 3?

A. That is my understanding.

Q. There was a provision in that original agreement which was then signed, as I understand it, as follows, and this is off the record. This is a leading question and I have asked the Labor Relations Board to bring down the copy of the agreement as it was originally signed, and if it doesn't conform with this I will agree to have it struck out. Strike all that out.

Q. (By Mr. Riggs, continuing) I show you a

(Testimony of David Girton Fleet.)

copy of an agreement between the Consolidated Aircraft Corporation and the International Association of Machinists, Aircraft Lodge No. 1125, dated June, 1941, and ask you if that was the agreement that was signed on that date?

(Handing paper to the witness.)

A. (No response.)

Q. While Mr. Fleet is looking at this I can state, Mr. Examiner, that I desire to show by Mr. Fleet the history of the company's relations with the labor union, which I think the Board has said is important and relevant in these cases, and have testimony particularly with reference to the classification of jobs to show that there has been negotiations with the Government and other aircraft companies with [679] relation to that matter, and stabilization of wages on the western coast, which is still going on.

The Witness: This appears to be the agreement that was signed.

Mr. Riggs: I would like to have that marked as Respondent's Exhibit 10.

(The document referred to was marked as Respondent's Exhibit No. 10 for identification.)

Trial Examiner Hektoen: How does it differ from the one we already have in evidence?

Mr. Riggs: I was just going to point that out.

The difference between this agreement as originally signed and the present agreement, which is in force, lies in paragraphs 2 and 3. The substance of this agreement provided for a minimum rate of pay

(Testimony of David Girton Fleet.)

of 55 cents an hour until the department establishes a higher minimum hourly rate under the provisions of the Walsh-Healy Public Contracts Act. That is the main difference in reference to paragraph 2.

And then paragraph 3 contains a provision for the establishment of a joint committee to review hourly wage rates and a provision for submission of disagreements to a master board. There is a 5 cent an hour increase to every employee effective May 3, 1941.

Trial Examiner Hektoen: Well, those are the two principal changes? [680]

Mr. Riggs: No, there is one here which follows.

Trial Examiner Hektoen: Just give me the paragraph number, will you?

Mr. Riggs: Paragraph 3 provides that in the event there is——

Trial Examiner Hektoen: I don't think you need to read it into the record, Mr. Riggs.

Mr. Riggs: That is the paragraph that I would like to read into the record.

Trial Examiner Hektoen: If you want to, you may go ahead.

Mr. Riggs: The main change in paragraph 3 is that:

“In the event standard rates of pay or wages shall be adopted for the aircraft industry by any executive order or ruling of the President of the United States, the National Defense Mediation Board or any other governmental board of authority, the rates

(Testimony of David Girton Fleet.)

of pay and wage rates herein provided for shall be superseded by such order or ruling."

Trial Examiner Hektoen: Do you offer that?

Mr. Riggs: This is marked as Respondent's Exhibit 10 for identification. Yes, I offer it in evidence.

Trial Examiner Hektoen: Do you have any objection?

Mr. Harrington: I haven't seen it.

(Exhibit handed to Mr. Harrington.) [681]

Mr. Harrington: No objection.

Trial Examiner Hektoen: It may be admitted.

(The document heretofore marked for identification as Respondent's Exhibit 10, was received in evidence.)

Q. (By Mr. Riggs) Do you recall anything about a meeting of southern aircraft companies in May, 1941?

A. I am sorry, I didn't hear you.

Trial Examiner Hektoen: Read the question.

(Question read.)

The Witness: Yes. I believe that the aircraft companies met in May of 1941 to endeavor to work out some classifications. I think they met in Los Angeles.

Q. (By Mr. Riggs) Were you present at the meetings? A. No, I was not.

Mr. Ryan: Mr. Examiner, I can't see that the meetings between the various aircraft companies for the purpose of making uniform certain conditions

(Testimony of David Girton Fleet.)

throughout the industry has any bearing on the issues in this case. The duty of this company to bargain with this union are not affected in any way.

Trial Examiner Hektoen: I take it we are not going into it because Mr. Fleet wasn't at the meetings.

Q. (By Mr. Riggs) Do you remember anything with reference to the North American Company happening in June, 1941?

A. Yes. North American had had a strike. [682]

Mr. Ryan: I object to that as immaterial.

Trial Examiner Hektoen: He may continue.

The Witness: I would just as soon strike that out if you prefer. I do recall that the Government and Labor and North American sat down to discuss their agreement and they arrived at a new minimum wage scale of 60 cents an hour with, I believe, automatic increases to 75 cents as a result of that hearing.

I believe that it was the Government's desire to endeavor to get all the Southern California aircraft companies together to see if they would not also put in a similar scale.

Q. (By Mr. Riggs) Do you know whether the aircraft companies did get together with reference to standard job classifications at the request of the Office of Production Management?

A. Yes. The work that had been started by the Committee in May was carried on at the request of the Government and was presented to the Govern-

(Testimony of David Girton Fleet.)

ment, I believe, in June or July of '41 at a meeting in Washington.

Q. Did you attend the meeting in Washington in July of 1941? A. I did not.

Q. Do you recall anything with reference to Douglas Aircraft's rate happening in August, 1941?

[683]

Mr. Ryan: I object to all this as immaterial.

Trial Examiner Hektoen: Is it leading up to this classification question?

Mr. Riggs: Yes.

Trial Examiner Hektoen: You may proceed.

Mr. Riggs: I intend to show that entire matter has been brought about at the request of the Office of Production Management and the War Production Board, and it would be impossible for any one aircraft company on the Pacific Coast to change the job classifications or rates higher than others under the conditions that the Government has laid down and requested

Trial Examiner Hektoen: Read the question.

(Question read.)

The Witness: May I refresh my memory here?

Trial Examiner Hektoen: Yes.

The Witness: According to the record that is in my file, Douglas Aircraft installed the 60 and 75 cent starting rate on August 8th.

Q. (By Mr. Riggs) Did the company or your father, Mr. Fleet, receive a telegram from Mr. Sidney Hillman about August 18, 1941?

(Testimony of David Girton Fleet.)

A. We received an invitation from Mr. Hillman to attend.

Q. Will you look through that file and see if you find a copy of that telegram? [684]

Trial Examiner Hektoen: Maybe we are agreed on what it said.

Mr. Riggs: Well, it invited this company together with other companies to attend a conference with reference to wage stabilization in Washington.

Mr. Ryan: We will take his word for that, if he says that. We don't need the telegram.

Trial Examiner Hektoen: All right, it is so stipulated.

Q. (By Mr. Riggs) I will show you a press release from the Office of Production Management, Labor Division, of August 15, 1941, and ask if that was sent to the company?

(Handing paper to the witness.)

A. It was evidently sent to us because we got it. It is in the file.

Q. Does that refresh your recollection as to who was invited to the conference?

A. Oh, I recall that the presidents of all of the aircraft companies in Southern California were invited to the conference.

Q. Will you state the names of the people who were invited?

Trial Examiner Hektoen: That is not necessary.

Mr. Riggs: I did not understand you.

Trial Examiner Hektoen: Isn't that sufficient?

(Testimony of David Girton Fleet.)

Q. (By Mr. Riggs) Were any of the labor representatives invited? [685]

A. Oh yes, there were the following: Richard Frankenstein, director of the aircraft division of the U.A.W.-C.I.O., Eric Peterson, vice-president I.A. of M.; W. J. Chudleigh, International Association of Machinists, San Diego; Dale O. Read, International Association of Machinists, Burbank; George Castleman, vice president of the International Association of Machinists, Los Angeles; Jimmy Goff of the United Aircraft Welders, Los Angeles.

Those were the labor people.

Q. Did you attend the conference?

A. I did.

Q. Who else represented Consolidated?

A. Mr. Wiseman and Mr. Bowers.

Q. And where did the conference convene?

A. The conference convened in the Office of Production Management Building—I don't know what the name of the building was—Social Security, possibly,—maybe some of the union members could help me on that.

Trial Examiner Hektoen: Well, that is all right.

Q. (By Mr. Riggs) Who presided over the conference? A. Dr. Lubin really presided.

Q. What was the subject discussed at the conference?

A. Well, the conference broke up. The International Association of Machinists was there in body and willing to sit in joint session with management,

(Testimony of David Girtton Fleet.)

but the C.I.O. refused [686] to do so, therefore, the conference really broke up.

Q. What was the purpose of the conference?

A. The purpose of the conference, as explained by the Government representatives, was to effect an agreement between the various unions and managements representing the Southern California aircraft companies, which would lead toward stabilization of wage rates and employment in the aircraft industry. [687]

Q. Did that include classification of jobs, wage rates, working hours, and so forth?

A. I believe that everybody had that in their minds, management did, and I think labor did, and I am sure Government did.

Q. Were those things discussed at all either by the chairman announcing the purpose of the conference, or at the conference itself?

A. To tell the truth, the conference really recessed the first day, because we were waiting on Mr. Frankenstein of the C. I. O. to come, and the second day when Mr. Frankenstein came, he said he wasn't interested in sitting down with a stabilization meeting with representatives of the A. F. of L. and with the Government, and he said he was going back, and the conference broke up.

Q. Did the conference have a report from the regional committee of the Southern Aircraft Companies with reference to classification of jobs?

A. I believe that was presented by management to the conference. I can say there, when the confer-

(Testimony of David Girton Fleet.)

ence broke up, negotiations between those unions whose agreements had expired continued, and I believe the A. F. of L. sat in with Lockheed and Vultee, I believe, sat in with its C. I. O.

Q. Was the conference adjourned sine die, or subject to call, after the new Lockheed-A. F. of L. agreement had been [688] concluded?

A. What does sine die mean?

Q. Well, without date.

A. I would say it was sine die, then.

Q. Had the Lockheed agreement with the American Federation of Labor expired at that time?

A. Yes, I believe it had.

Q. Do you know when that was signed between Lockheed and American Federation of Labor, Lodge 727?

A. I don't recall.

Q. Will you refresh your recollection on that?

Trial Examiner Hektoen: Whatever date you say we will take. When was it?

Mr. Riggs: The 12th of September.

Trial Examiner Hektoen: All right.

The Witness: That is what this said.

Mr. Harrington: What year, Mr. Riggs?

Mr. Riggs: 1941.

Q. (By Mr. Riggs) What did that provide, Mr. Fleet?

A. Lockheed agreement was signed with Lodge 727 providing for 50 to 75 cents starting rate, and 10 cent blanket increase retroactive to July 1. This says 10 per cent, but I am sure it was wrong.

Q. What was it? A. 10 cents. [689]

(Testimony of David Girtton Fleet.)

Q. 10 cents instead of 10 per cent?

A. Right.

Q. Did that bring about any further negotiations between Consolidated and Aircraft Lodge 1125?

A. Yes. Our agreement had not expired. It was in full force and effect. However, management realized we couldn't long continue to get men if we didn't do something about our starting rates, and we weren't particularly reluctant to raise them. However, we didn't particularly feel that when our contract was in effect that we were obligated to put in any 10 cent blanket increase.

Q. On September 17 did you receive a letter from the union with reference to this matter? Will you look through your file?

Trial Examiner Hektoen: Just say "yes."

The Witness: Yes.

Q. (By Mr. Riggs) Will you produce a copy of the letter from the file?

A. I hope I have better luck finding it than you did on that telegram. Here it is.

Q. Is this a copy of the letter you received at that time? A. That is right.

Mr. Riggs: I offer in evidence the letter dated September 17, 1941 to Mr. Rubin H. Fleet, president of Consolidated Aircraft Corporation, signed: W. J. Chudleigh, [690] President, Aeronautical Mechanics Lodge 1125.

(The document referred to was marked as Respondent's Exhibit No. 11 for identification.)

Mr. Harrington: May I have a recess?

(Testimony of David Girton Fleet.)

Trial Examiner Hektoen: Yes.

(Short recess)

Trial Examiner Hektoen: We will come to order, please.

Mr. Riggs: Is there any objection to this, Mr. Harrington?

Mr. Ryan: No objection, inasmuch as it is a letter from Chudleigh to the company.

Trial Examiner Hektoen: Respondent's Exhibit 11 is admitted without objection. Right?

Mr. Ryan: Correct.

(Thereupon the document referred to, heretofore marked as Respondent's Exhibit No. 11 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 11

Letterhead of

Aeronautical Mechanics Lodge 1125

A.F. of L.

1054 - 3rd

San Diego, California

September 17, 1941

Mr. Reuben H. Fleet

President, Consolidated Aircraft Corp'n.

Lindberg Field

San Diego, California

Dear Sir:

Pursuant to the action of Aeronautical Mechanics Lodge 1125 at special meetings held September 16th

(Testimony of David Girton Fleet.)

and 17th, and under the provisions of section 3, paragraph 3, page 8 of our agreement dated June 12th, 1941, and in lieu of the agreement signed between the Lockheed-Vega Company and Lodge 727 of the Aeronautical Mechanics, and approved by the Office of Production Management, Army and Navy, it is requested that the minimum wage scale at Consolidated Aircraft be established at sixty cents (60c) per hour, increasing five cents (05c) per hour every four (4) weeks until seventy-five cents (75c) per hour is reached; that a ten cent (10c) blanket increase be granted; all increases to be retroactive to the first full pay in July.

Further, in accordance with the action of the membership of Lodge 1125, a reply is desired within twenty-four (24) hours.

Yours very truly,

/s/ W. J. CHUDLEIGH

W. J. Chudleigh

Pres., Aeronautical Mechanics
Lodge 1125, I. A. of M.

Q. (By Mr. Riggs) Just to hurry this along, Mr. Fleet, and summarize the matter, this is a letter from the union which states in substance: In lieu of the agreement signed by the Lockheed-Vega, Lodge 727, requesting that a minimum wage at Consolidated be established at 60 cents an hour, increasing 5 cents an hour every four weeks until 75 cents an hour is reached, and that a 10 cent blanket increase be granted. [691]

(Testimony of David Girton Fleet.)

After this 60 cents an hour and 5 cents per hour every four weeks until 75 cents an hour is reached, there is a penciled line and annotation "O. K." Do you know whose handwriting that is?

A. That is Major Fleet's.

Q. In other words, your father agreed to increase the minimum rates to equalize those already agreed upon by Lockheed-Vega?

A. It may not have been agreed so far as the union was concerned, but in his own mind he thought it O. K.

Q. Did he make any counterproposal within the next day or two to the union? A. Yes.

Q. Do you remember what they were?

A. I believe he agreed to put in those higher starting rates, and to put in a 5 cent blanket increase effective the first part of July. I don't know the exact date, in lieu—of that later move, that was in lieu with what we call the jackpot provision which provides for 5 cents an hour times each employee to be put in the jackpot and then be distributed through collective bargaining to the two-thirds of the most deserving employees.

Q. Had that provision been in the agreement as negotiated on June 12? A. Yes, it was. [692]

Q. Did the union desire a raise of 10 cents an hour in that letter?

Mr. Ryan: The letter speaks for itself.

Trial Examiner Hektoen: It did, did it not?

Mr. Riggs: Yes.

The Witness: Yes, that is correct.

(Testimony of David Girton Fleet.)

Q. (By Mr. Riggs) Was the company willing to agree to that?

A. No, the company offered a five cent blanket increase.

Q. And that is what they had already increased, five cents in May, and 5 cents in July?

A. That is correct.

Q. Did the increase of 10 cents an hour bring the employees above the Lockheed-Vega rate?

A. That was my understanding, and our contention.

Q. What happened after that, Mr. Fleet?

A. Negotiations broke down, because we weren't able to agree upon what we would do. Mind you, the agreement was still in effect, and the union was arguing their case on the ground that the standard rates of pay had been set by government agencies. We contended they had not been set, because the stabilization conference had broken up and while some of the companies whose agreements had expired had actually put in this new 60 and 75 cent rate, all of them had not, and no government dictate had come saying they were standard rates; or, we were unable to find out from the president or from the [693] government agencies whether or not he had established a standard rate, and we didn't get any response from the president. Oral responses from the Army and Navy people said that they knew of no such rates.

Q. Then what happened after that?

A. The negotiations finally got to the boiling

(Testimony of David Girtton Fleet.)

point and the union took a strike vote which, in my opinion—and when I say “in my opinion,” now, I am not necessarily representing the views of the company—it really was a violation of our contract, in that the contract provided there was to be no strikes or lock-outs. Of course, one didn’t actually occur, but the contract was good for two years, or the duration of the emergency, and we had a regular grievance procedure, an arbitration procedure set up by which any disputes would be submitted to arbitration.

I felt that was the way it should have gone. But union took a strike vote, undoubtedly in an endeavor to get before the National Defense Mediation Board.

Q. Did anyone on behalf of the company suggest arbitration of the question to the union?

A. Yes.

Q. Under the terms of Section 23 of the agreement?

A. Yes.

Q. Who did?

A. I think Major Fleet suggested that. [694]

Mr. Ryan: Was that before or after the strike?

The Witness: That was before the strike vote.

Q. (By Mr. Riggs) That was before the strike vote?

A. Yes.

Q. Had it been rejected by the union at the time it took the strike vote?

A. Yes.

Q. What happened next, Mr. Fleet?

A. The strike was voted, was held, and as I

(Testimony of David Girton Fleet.)

understand it, it was in the affirmative that they should strike.

Q. That is, unless they got the 10 cent blanket increase?

A. The demands they were making.

It was then certified to the National Defense Mediation Board, and hearings were then held later on, during the year, the latter part of September, as I remember it, at which——

Q. Where were those hearings held, and who attended?

A. In Washington. On behalf of the company: Major Fleet, Herman Wiseman, I think Bowers, and myself attended. On behalf of the union I think Mr. Chudleigh, who, I believe, was the president, Don Wilkerson—you were there, weren't you, Don? Ken Phillips; I don't remember just who.

Trial Examiner Hektoen: There were several representatives.

The Witness: Several representatives from the local lodge. [695]

Q. (By Mr. Riggs) Did the National Defense Mediation Board hand down a decision on the occasion, or was a compromise reached?

A. We didn't get any formal written decision from the National Defense Mediation Board, I don't believe. We met for several days with offers and counter-offers going back and forth, and we finally agreed to make a 13-cent increase, and at that time the jackpot wage rate provision was washed out of the agreement, and in lieu thereof

(Testimony of David Girtton Fleet.)

we had a regular six months review of each individual employee upon the completion of his six months anniversary.

I think that is correct. [696]

Q. Well, were those sections, Sections 2 and 3 of the agreement as previously existed then amended as of April 18, 1941, as they now exist in Board's Exhibit No. 3?

Trial Examiner Hektoen: October 18th.

Mr. Riggs: October 18th, 1941.

The Witness: Yes, that is my memory.

Trial Examiner Hektoen: That is correct.

The Witness: And a 13 cent blanket increase was put in, retroactive, I think, to August 9th.

Q. (By Mr. Riggs) Do you recall shortly after—just one moment, Mr. Fleet. Do you recall after war was declared on December 7th, whether shortly thereafter there was a blackout at San Diego?

A. Yes, I believe there was.

Q. Do you recall when it was?

A. No.

Q. Was it December 10 or 11th?

A. It might have been.

Q. Well, I will show you this petition to the management of the Consolidated Aircraft Corporation, dated December 11, 1941, and ask you if that refreshes your recollection as to when that blackout took place?

(Handing paper to the witness.)

A. Yes; it definitely was on the night of December 10th.

(Testimony of David Girton Fleet.)

Q. Do you remember how long it was? [697]

A. I do not.

Mr. Riggs: I would like to offer this in evidence.

The Witness: It must have been long enough to have incurred considerable loss of man hours anyway, according to this.

Q. (By Mr. Riggs) Is that a copy of a petition that was presented to management by various or certain employees of Consolidated?

A. Yes, I think it was.

Mr. Riggs: I would like to offer just one of these in evidence, Mr. Examiner, as a sample to show the nature of the petition that was presented and not necessarily as to the number of people that signed it or the names of them.

(Handing paper to Mr. Harrington.)

Mr. Harrington: I have no objection to it, but I don't think it is material.

Mr. Riggs: We will have just one marked, one dated December 11, 1941, addressed to the management of Consolidated Aircraft Corporation, "Copy to the Fourth Interceptor Command, Civilian Defense Office," and attached thereto is a sheet bearing penciled signatures. The signatures I do not think are material except to add to the point that the petition was signed by various employees.

Trial Examiner Hektoen: By numerous employees.

It may be marked and received in evidence. [698]

(Testimony of David Girton Fleet.)

(The document referred to was marked as Respondent's Exhibit No. 12, and received in evidence.)

RESPONDENT'S EXHIBIT No. 12

December 11, 1941

Management of Consolidated Aircraft Corporation:
Copy to:

4th Interceptor Command
Civilian Defense Office

The attached sheets contain signatures of;—Employees on the night shift of Consolidated, Plant number 2, demand that the necessary steps be taken immediately for the complete painting of all windows, roof, skylights, and white stucco walls throughout the entire plant. We see no necessity for there being a repetition of the loss of man hours such as there was during the black out of the night of December 10, 1941.

It is the will of the undersigned to continue the work, during these black outs, which is so necessary and vital to the defense of our country.

The following gladly volunteer their time to perform this task during daylight hours, but we again demand immediate action.

- | | |
|-----------------------|---------|
| 1. E. G. McCleave | 58-4013 |
| 2. E. C. Gonzales | 68-4447 |
| 3. A. A. Zdzieblowski | 58-4110 |

(Testimony of David Girton Fleet.)

4.	B. G. Gutinsohn	52-3117
5.	R. L. Fitzpatrick	58-4304
6.	William M. Flenniken	58-4089
7.	George F. Bailey	58-4000
8.	Joseph D. Thacker	67-1031
9.	P. L. Mize	67-1062
10.	E. A. Day	67-1007
11.	P. E. Ballard	67-1065
12.	Robt. Shead	
13.	J. E. Horner	58-4451
14.	F. L. Fuller	58-4379
15.	R. L. Abel	67-1011
16.	Burl Cowan	58-4100
17.	Frank J. C de Baca	58-4230
18.	John G. Bloomfield	58-4448
19.	Alvin F. Nemir	58 4453
20.	H. F. McGlynn	67-1044
21.	Guy Benson	67-1021
22.	Kenneth Kelly	67-1050
23.	Raymond Thiel	67-1127
24.	Ewart Albert Swger	67-4712
25.	C. Bonar Lockrem	67-1087
26.	John J. Riddle	67-1052
27.	W. T. Russell Jr.	67-1097
28.	Dewey Smith	67-4201
29.	W. R. Seymour	67-1076
30.	J. H. Bell	67-4132
31.	P. J. Ashton	67-4562
32.	F. Westhoff	67-4096
33.	C. J. Nilles	67-4015
34.	F. I. Garrison	67-4025

(Testimony of David Girton Fleet.)

35.	H. R. Hagen	67-5010
36.	E. H. Loewenstein	67-4818
37.	E. C. Travistum	67-4700
38.	Al Reiter	67-4112
39.	D. A. Dinkins	67-4954
40.	R. C. Martin	67 4118
41.	C. W. Mann	67 4774
42.	L. C. Ackerman	67-4003
43.	W. W. Cummings	67-4918
44.	Fred P. Wilson	68-4151
45.	J. H. McDade	67-1096
46.	D. L. Benson	67-2004
47.	C. C. Walker	67-3051
48.	M. C. Rotter	67-4131
49.	V. Friedman	67 3025
50.	J. H. Jones	67-4199
51.	W. D. Dolan	67-1093
52.	R. L. Sanner	67-4308
53.	D. M. Claibourne	67-4787
54.	C. Martens	67-3022
55.	Wm. C. Ewert	4043-67
56.	Gene Moon	67-1032
57.	T. S. Smart	67-4009
58.	P. Madsen	67-2006
59.	Paul Dixon	58-4286
60.	R. L. Walker	58-4388
61.	Bill Hill	67-1045
62.	T. B. Jensen	67-3017
63.	C. W. Brown	67-3027
64.	C. C. Pyle	
65.	L. B. Updegraff	

(Testimony of David Girton Fleet.)

66.	R. Haffey	1005-67
67.	S. Pagluiso	3047-67
68.	F. Hudson	2009-67
69.	D. Queen	4566-67
70.	D. Peterson	4560-67
71.	Bill Magruder	1114-67
72.	Loyd D. Stokes	4808-67
73.		
74.	Bert Calnert	4373-67
75.	Harold A. Koch	4514-67
76.	Alfred H. Landers	4517-67
77.	L. D. Lessenger	4205-67
78.	T. C. Paige	5020-67
79.		
80.	R. F. Tesh	4392-67
81.	L. C. Crowell	4184-67
82.	Preston Banks	67-4575
83.	F. E. Curtin	67-5015
84.	Orin K. Hand	67-5027
85.	John K. McDonough	67-4394
86.	R. A. Hullt	4334-67
87.	Raul Lopez	67-5019
88.	R. D. Veatch	4866-67
89.	Fred Rodly	67-5030
90.	Lee Martin	67-5021
91.	David L. Petty	67-5045
92.	Ray C. Butler	67-5017
93.	P. H. Shepherd	4207-67
94.	O. T. Floodberg	4204-67
95.	Edward Bodnar	No. 67-5016
96.	Thomas R. Copeland	67-4776
97.	S. B. Carmen	67-4481

(Testimony of David Girton Fleet.)

98.	George Gould	67-4972
99.	K. A. Lauge	
100.	Robert Gozelle	67-4834
101.	A. K. Ambrose	4220-67
102.	A. G. Cook	4324
103.	A. Sopko	5048
104.	J. Leonard	4944
105.	C. L. Huffman	52-3129
106.	Boyd E. Roy	67-1126
107.	R. H. Hay	58-2056
108.	A. L. Sutton	58-2097
109.	Dean Whipkey	58-2059
110.	E. N. Gardner	60-2145
111.	J. T. Jackson	58-2090
112.	George L. Howard	67-1075
113.	John Robert	58-2096
114.	Dale H. Freeman	8-2221
115.	H. H. Collings	67-4016
116.	N. E. Westover	67-1008
117.		
118.		
119.		
120.		
121.		
122.		
123.		
124.		
125.		
126.		
127.		
128.		

(Testimony of David Girton Fleet.)

129.

130.

131.

132.

133.

134.

135.

136.

137. R. R. Page 4532-67

138. R. Snyder 4524-67

139. L. D. Shane 4367-67

140. Farris O Bryan 4976-67

141. P. D. Mueller 4381-67

142. Harlie A. Varner 5036-67

143. I. L. Unroe 4233-67

144. George Flood 4812-67

145. Frank Kestel Jr. 4265-67

146. Hans Mattenklodt 4437-67

147. Robert Montgomery 4734-67

148. C. F. W. Brown 4986-67

149. Ellsworth A. Ferry 5043-67

150. Oscar D. Kemp 4603-67

151. Irvin Melvin 5051-67

152. D. K. Crawford 4039-58

153. E. E. Basich 4901-67

154. J. E. Kestel 4961-67

155. W. C. Meeks 4984-67

156. James Hunter 4819-67

157. D. A. Peppler 4487-67

158. C. G. Fleming 5022-67

159. G. H. Bartole 4726-67

(Testimony of David Girton Fleet.)

160.	G. R. Knorr	5052-67
161.	P. D. Foubert	4835-67
162.	R. Wylil	4105-67
163.	R. E. Galligo	5037-67
164.	R. O. Lindstrom	4788-67
165.	J. R. Brower	4477-67
166.	C. E. Goude	3034-67
167.	O. L. Harwell	4398-67
168.	S. L. Sundine	4701-67
169.	J. L. Burdette	4479-67
170.	B. G. Wood	4256-67
171.	O. S. Lowers	4168-67
172.	E. P. Martin Jr.	4182-67
173.	H. E. Bouteiller	4028-67
174.	R. D. Johnson	1048-67
175.	W. R. Farmer	4027-67
176.	F. J. Hodges	4505-67
177.	G. Graustedt	3004-67
178.	E. J. Cusuack	4014-67
179.	B. S. Wasson	4930-67
180.	R. H. Richardson	4029-67
181.	R. L. Ousley	4668-67
182.	P. J. Tyll	4121-67
183.	R. R. Rummel	4755-67
184.	[Illegible]	4854-67
185.	T. L. Ferris	4330-67
186.	J. R. Harris	4177-67
187.	G. G. Ellison	4325-67
188.	F. O. Fleck	4061-67
189.	J. P. Prichtel	4497-67
190.	F. A. Bessey	60-2012

(Testimony of David Girton Fleet.)

191.	D. G. Burton	67-4390
192.	B. A. Buffat	60-2016
193.	K. M. Davis	67-4020
194.	R. M. Fanning	67-4266
195.	J. E. Dopp	67-4491
196.	B. C. Barrett	67-4075
197.	W. R. Stone	67-4846-67
198.	D. C. Wesley	4339-67
199.	Maxwell	4005-67
200.	R. W. Tidball	4077-58
201.		

Q. (By Mr. Riggs) At the time this petition was signed were the windows and the roof and the skylights of the company's plant all glass?

A. Yes, sir.

Q. Did the company have a force of painters in a painting department?

A. Yes, sir.

Q. Do you recall whether a bulletin was issued on December 13, 1941, subsequent to the receipt of this petition, by Mr. Laddon with reference to working on Sunday?

A. I do not.

Q. You don't recall that bulletin?

A. No.

Q. Or the circularization of a petition among the employees stating that those that wanted to could work for nothing, or a petition by which they requested the management to let them work at time and a half?

(Testimony of David Girton Fleet.)

A. I remember something of that nature.

Mr. Riggs: The point I am leading up to, Mr. Examiner, is that one of the departments which requested to work was the painting department. You recollect one painter testified on that here?

Trial Examiner Hektoen: Yes. [699]

Mr. Riggs: And it has been conceded on the record that certain men did work and they did receive double time so I will drop that subject.

Trial Examiner Hektoen: Very good.

Q. (By Mr. Riggs) Mr. Fleet, during the period, say from the first of January, 1942, were you very active in the negotiations with the union?

A. Yes, quite active.

Q. Who represented the company with you?

A. Mr. Wiseman and Mr. Bowers.

Q. And in your meetings with the union can you say whether or not most or all of you were present?

A. At a number of meetings the three of us were present and at other meetings I think Wiseman and Bowers were present.

Q. And do you recollect what those meetings were about? Can you just state the various subjects as briefly as you can?

A. We wanted to work out a better grievance procedure. That was one of the subjects.

I am sorry, but I have looked at so many agreements in the last 30 days due to the fact that my new job has four different divisions, all having separate union contracts, that I am all gummed up on union clauses and provisions and everything, so

(Testimony of David Girtton Fleet.)

without refreshing my memory by looking at the file I couldn't remember all the subjects. [700]

Mr. Riggs: Maybe Mr. Harrington won't mind if I suggest them to you.

Q. (By Mr. Riggs) Was the question of the 22 men who had been hired out of the state and had been put to work at rates without consultation with the union discussed?

A. Yes, that was one.

Q. And that the inspection department had given interim rate increases to various employees without consultation with the shop committeemen?

A. Correct, yes.

Q. And was there any question or negotiations or talks with reference to job classifications?

A. Yes, that is true. Not negotiations, necessarily, I wouldn't say, but certainly discussions.

Q. And did those discussions cover the previous grounds that you have gone over to some extent as to the wage stabilization attempts made in the previous summer?

A. I don't know whether we dwelt much on that or not. The union wanted to sit down and discuss the rates for the various classifications in the shop.

Q. And what did you say with reference to that?

A. Our contract provides—their contract provides for an individual review of each man every six months, which we have carried out and I suppose they are now carrying out.

The rates and the classifications that were estab-

(Testimony of David Girton Fleet.)

lished [701] were for our guidance. We had been rapidly putting on men. Department heads had been up-graded. New foremen and so forth were made and we had two different plants to worry about, therefore, we had to have some guide, some scale of wages so that one foreman in Plant 1 wouldn't pay a man 10 cents an hour more than the equivalent work in Plant 2, so we used the rates that had been established by this Southern California Conference of Aircraft Manufacturers and used that as a guidance in our bargaining or negotiating with the union.

I believe there were quite a number of cases where a man's rate, or the rate that the union felt he should get, would bring him to the top, or past the top of what we had—what we were using as a guide. In that case we had procedure to take it up through the grievance procedure and into arbitration. I think probably some of those cases went to arbitration and have been undoubtedly settled by now.

Q. Do you recall the taking up with the union or talking about the Williamson case?

A. Williamson? The name is familiar but I don't remember what the case was about.

Q. Well, was a man that was fired some time in the spring, where the company claimed he was making a speech about the company being run by Nazi sympathizers discussed?

A. Yes, I think I remember that—that case. I

(Testimony of David Girtton Fleet.)

wasn't [702] intimately connected with it. Didn't it take place at Plant 2?

Q. I think it did, yes.

A. Yes, I remember that.

Q. Well, did you have any negotiations with the union with reference to his reinstatement?

A. I may have had. I don't recall.

Q. Well, do you remember the case of a Mr. Fisher who was discharged? A. Yes.

Q. Did you have any negotiations with the company with reference to that?

A. With the union?

Q. With the union with reference to his reinstatement?

A. Yes, we discussed it quite a number of times. Never got together on it. [703]

Q. Do you remember meeting with Mr. William R. Walsh in the U. S. Grant Hotel?

A. Yes, on the Fisher case; I remember that.

Q. On the Fisher case, together with representatives of the Union and of the Company?

A. Yes, I do.

Q. Did you, subsequent to that meeting, take up with any of the foremen of the company whether they would be willing to have Mr. Fisher back in their department?

A. I discussed it with several people yes, including Kelley, I believe George Newman, prior to the time he went over to Fort Worth, and I think I talked to his previous foreman in Plant 1. I don't remember who it was. It may have been—

(Testimony of David Girton Fleet.)

Q. Was it Liegal? A. No.

Q. Mineah?

A. No. It may have been—I may have talked to Jack Waskey about him. Waskey was a former president of the union who was then a foreman and I believe Fisher may have worked for him. I may have asked him about him.

Q. Do you recollect whether you talked with more than one foreman in any of the departments about reinstatement?

A. No, I don't.

Q. Do you recollect whether you talked to Mr. Mineah, who [703-A] was his foreman when he was discharged?

A. Yes, sir. I don't recall any conversations, although I may have.

Q. In July, 1942, was this question of wage stabilization taken up again?

A. July, 1942?

Q. Yes, this last July?

A. Yes. We had further discussions on that.

Q. And at whose invitation—by whose invitation was this taken up?

A. The Government's.

Q. The War Production Board?

A. That is correct.

Q. Was there a meeting held in Los Angeles with reference to the matter?

A. Yes; there was, in Hollywood.

Q. Who represented the Government?

A. You'd better give me the list of names.

(Testimony of David Girton Fleet.)

(Handing paper to the witness.) Wendell Lund. He came there to the first meeting and opened the meeting, I believe, and Paul Porter presided as the chairman.

There were representatives of the A. F. of L. and the C. I. O. present. Mr. Brown, who is here now, was one of the A. F. L. representatives and I think Pyett was alternate. I believe Pyett is the president of the Local, and, let me [703-B] see, George Castleman was another representative of the A. F. of L.

Trial Examiner Hektoen: That is sufficient.

The Witness: I don't remember the rest of them.

Q. (By Mr. Riggs) Any C. I. O. men present?

A. Yes, Montgomery and three or four others.

Q. What representatives were present — were there representatives present from the management of the aircraft companies operating in Southern California?

A. Yes. Each company was represented by one man and an alternate.

Q. Would you give me the names of the companies?

A. Boeing, North American, Northrop, Vega-Lockheed, Vultee, Consolidated, Douglass and Ryan.

Q. And who represented Consolidated?

A. Consolidated was represented by Mr. Beck, Mr. Person, and myself.

Q. What happened at that conference?

(Testimony of David Girton Fleet.)

A. At this conference the C. I. O. was willing to sit down in joint session but the conference broke up, as a result, probably, of disagreement between government agencies more than anything else. Management and labor were willing to bargain and negotiate but the statements made by representatives of the Government really led to the breaking up of the conference. And in the paper I read that there have been [703-C] several tentative dates set for reconvening of the conference.

It was adjourned sine die, or whatever that means. I guess subject to call. But so far nothing has been done. [703-D]

Q. Was the matter of job classifications and so forth, one of the purposes of that conference?

A. Yes. That was what we had in our minds, getting into the job classifications, setting up rates for the various jobs, but we never did get that far. That was probably the prime point on the agenda, but we never got to it.

Trial Examiner Hektoen: It was never reached?

The Witness: No.

Q. (By Mr. Riggs) The disagreement between the government agencies as to jurisdiction was between the OPA and the War Man Power Commission, wasn't it?

A. Not too much Mr. Porter's side.

Q. What was his side?

A. He was supposed to be the chairman there.

Q. As such he was supposed to be sitting with

(Testimony of David Girton Fleet.)

the government agencies on both sides, including the Army and Navy?

A. He was sort of hemmed in, too, not to mention management and labor.

Q. Now, can you state whether it would be, aside from any provisions of our contract, whether it would be practical under the present circumstances for any one aircraft company in the Southern California area, to sit down and arrange with labor, classification of jobs, rates of pay, and so forth, without the concurrence of the entire aircraft industry?

Mr. Ryan: Mr. Examiner, I object to that as a conclusion. It is opinion evidence, and not of any value in determining [704] the issues in this case.

Mr. Riggs: Of course it is opinion evidence, and if it is of no help, I will withdraw the question. It seems to me I have brought out enough to justify it.

Trial Examiner Hektoen: I would be glad to have Mr. Fleet's opinion, but it is to be understood it is his opinion, of course.

Mr. Riggs: Certainly, certainly.

Trial Examiner Hektoen: What do you say?

The Witness: You said "practical" and not "impossible," didn't you? It wouldn't be practical. It would not be practical at this particular time.

Mr. Riggs: I have nothing further from Mr. Fleet. I beg your pardon. There are two more questions.

Q. (By Mr. Riggs) Was the question of the 22

(Testimony of David Girton Fleet.)

out-of-state hires settled with the union to its satisfaction?

A. Yes. As a result of a meeting with Harry Malcolm, the conciliator, we agreed to make certain adjustments in pay back to the time those men had been cut, two of them had actually left the employ of the company, and we sent them checks to their residence; one we were unable to locate, and couldn't send him a check.

We also agreed to change our—to really go over to the other side of this matter of consulting the union committeemen before putting in an interim increase, and a bulletin was put [705] out to our foremen that they were definitely to follow certain steps.

Q. I think that bulletin of Mr. Leigh's is in evidence here. Do you know of any other question that was taken up by you and Mr. Wiseman and Mr. Bowers with the union that hasn't been settled?

A. That has not been settled?

Q. Outside of this question of job classification which we have discussed.

A. I don't know whether the Fisher case has been settled.

Q. How about the change from two shifts to three shifts? Was that discussed with the union representatives before it was effected?

A. Oh, yes. There has been considerable discussion about three shifts, I think, in connection with the work week, I believe, and the pay that is paid to people on various shifts, yes.

(Testimony of David Girton Fleet.)

Q. Do you recall whether the work week and the pay that was to be received by the shifts starting at midnight on Saturday was discussed with the union representatives?

A. Yes. We talked back and forth, and so forth, and never were able to agree upon it. The company, management, contended that the men working that shift should be paid time and a half instead of double time, and the union, I believe, asked for double time. [706]

Q. How often was that — was the question of wages on that shift discussed with the union?

A. Wages on that shift?

Q. Yes.

A. Individual wages?

Q. No, whether they should get time and a half or double time. Was that a subject of discussion with the union?

A. Yes. I think it was probably on the agenda and discussed at the meetings with Harry Malcolm too. I don't think we ever arrived at any solution to it.

Q. Has it ever been submitted to arbitration?

A. I don't know. It hasn't been, I don't believe, up to the time I left the company.

Mr. Riggs: That is all I have.

Cross Examination

Q. (By Mr. Harrington) You have stated in August of 1941 Douglas Aircraft installed 60 and 75 cent starting rates. Did Douglas have any agree-

(Testimony of David Girton Fleet.)

ment with any union? A. No.

Q. Did those meetings that you have testified to in Washington and in Hollywood, and those meetings with the different government agencies, did any of those things supersede collective bargaining as a means of arriving at things?

Mr. Riggs: I will object to that.

Trial Examiner Hektoen: Read the question.

[707]

(The question was read.)

Mr. Harrington: I asked him——

Trial Examiner Hektoen: I will sustain the objection to that.

Q. (By Mr. Harrington) Have these wage classifications and rates of pay been put into effect at Consolidated?

A. We use them, yes, for our own guidance. That is, I think Consolidated does. Where I say “we,” I mean “Consolidated.” I am no longer with them.

Q. They were drawn up without consulting with the union?

A. Yes, no consultation was had with the union so far as I know. I don’t believe the companies in Los Angeles that drew up those consulted the unions.

Q. Has not Vultee negotiated wage rates and classifications with the union there?

A. I do not know, but they have in some plants. You are talking about Vultee Field at Downey?

(Testimony of David Girton Fleet.)

Q. Yes. Is that where you are located?

A. I can't answer that question. That is the home office, but they have four different plants.

Q. On this petition, Respondent's Exhibit 12, who sponsored that petition, do you know?

A. I do not know.

Q. I believe you said it would be impractical to set classifications at this time. [708]

A. For any of the aircraft companies to set them without consultation with others, and the government. That was the way I understood the question. I may have been wrong.

Q. Do you know if the classifications and rates in use at Consolidated are the same as those in use at other aircraft plants?

A. I think they are practically identical in all respects. There are probably some variations. In fact, I know of some variations.

Trial Examiner Hektoen: But they are minor?

The Witness: They are a minor percentage, but not minor variations. They are a minor percentage of the total number of jobs, but there are some fairly important differences.

For instance, toolmakers we pay \$1.50 top, I believe, so far as the classification is concerned; and I believe the other companies pay \$1.40.

Q. With respect to the third shift operation paying time and a half instead of double time, isn't it a fact the company put that into operation without consulting the union?

(Testimony of David Girton Fleet.)

A. I don't think so. You are talking about the shift or rate?

Q. No, I am talking about paying time and a half instead of double time for that Sunday shift. [709]

A. It was our interpretation of the agreement, yes, if you want to say we put into effect our interpretation of that agreement.

Q. Without consulting the union?

A. Yes, just put it into the pay checks. I think it was some time after that the union objected to it, I think.

Q. Do you know whether or not Lockheed or Vega negotiated their job classifications with the unions in those plants?

A. I don't know whether they actually negotiated all the classifications, but I do know they discussed it with them; anyway, that is my understanding.

Mr. Harrington: No further questions.

Redirect Examination

Q. (By Mr. Riggs) You say you have been acquainted with a number of union agreements. I want to ask you if there are not two types: One providing for the job rating, or establishing a definite rate for a job which might be either a maximum or minimum, or just one rate; and the other providing for man rating, the individual man rating as provided for in Consolidated.

A. Yes, I have seen both types.

(Testimony of David Girton Fleet.)

Q. Have you ever seen one which contained both provisions?

A. Not exactly that way. I would like to explain it this way: The agreements with which I am familiar, they have classifications that have been agreed upon between management [710] and labor to establish definite rates or rate ranges for given jobs, and if labor doesn't agree, say, with the rate that is paid a man on any particular job, where there is a rate range, they have, of course, the privilege of putting in a grievance in the regular manner, and it is adjusted through grievance procedure, probably through arbitration if a clause is provided.

Ours is a little unique. I haven't run into one like ours. It provides, as I understand, for this individual bargaining on each man. Before I ever came into the labor picture I understand we had held these reviews with the union being represented, and the management, and they sat down and discussed each man.

Q. And in any event, in any disagreement, arbitration is provided for? A. Yes.

Q. As to any individual?

A. That is correct, as to any individual.

Mr. Riggs: That is all.

Mr. Harrington: No questions.

Trial Examiner Hektoen: Thank you very much, Mr. Fleet.

(Witness excused.) [711]

LAWRENCE ROBERT BECK,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Give your full name and address to the stenographer.

A. Lawrence Robert Beck, 1024 Cypress Avenue, San Diego.

Q. Are you employed by Consolidated, Mr. Beck?

A. Yes, sir; that is right.

Q. When did you enter their employ?

A. The latter part of March, 1942.

Q. At that time was there any wage review board in session?

A. No, I believe the wage review board started the first of April.

Q. So that you have been an employee of the Consolidated Corporation all the time that the wage review board—ever since it started in April up to the present time?

A. Yes, that is right.

Q. Have you been a representative of the Consolidated Aircraft Corporation upon the board?

A. Yes, I have.

Q. Have you been all the time or just occasionally?

A. Occasionally I have participated on the lower board and appeal board and in preliminary arbitration board.

(Testimony of Lawrence Robert Beck.)

Q. What is the title of your job? [712]

A. I am manager of the wage and salary administration division.

Q. Prior to coming to Consolidated by whom were you employed?

A. Lockheed-Vega Aircraft Corporation.

Q. And what was your job with them?

A. I was chief job analyst and then manager of the industrial relations research department.

Q. While you were with Lockheed-Vega did you have anything to do with the preparation of a job classification report in consultation with other aircraft companies?

A. Yes.

Q. What did you have to do with that?

A. Well, in the spring of 1941 when the aircraft companies attempted to agree on classifications and job descriptions for the industry as a means of stabilization, at the request of Mr. Hillman they formed a committee with representatives from each company and I was the representative from the Lockheed-Vega Corporation at that time and as such at the end of our research on the particular project at hand, my division at Lockheed edited the report which was forwarded to Washington to the Labor Department and the Army and Navy.

Q. Was that a voluminous report?

A. Yes, it was quite a sizable report.

Q. Was this volume which I pick up from in front of counsel [713] for the Board, entitled "Report of Job Classification and Rate Committee, July, 1941," the document you refer to?

(Testimony of Lawrence Robert Beck.)

A. That is the report.

Q. The cover of this has "Southern California Aircraft Industries—Consolidated Aircraft Corporation, Douglas Aircraft Company, Inc., Lockheed Aircraft Corporation, North American Aviation, Inc., Northrup Aircraft, Inc., Vega Airplane Company, Vultee Aircraft, Inc., were those the companies whose representatives participated in the preparation of this report?

A. Yes, I believe that is correct.

Q. Which you edited?

A. I believe that is correct.

Q. Was there a conference in Washington with reference to this report in July, 1941?

A. Yes, there was.

Q. Did you attend it? A. Yes.

Q. Where was the conference held?

A. It was held in the Social Security Building and in the Department of Labor.

Q. Who was present, if you recollect it, as briefly as you can? I don't want to go into detail about this.

A. The first meeting, of course, was attended by a good many government officials. Mr. Hillman was there and I be- [714] lieve Mr. Davis was there; Army and Navy officials and management and labor officials.

Q. What about Mr. Davis—what was his position?

A. He was merely called in as a consultant for Mr. Hillman and was introduced to the meeting.

(Testimony of Lawrence Robert Beck.)

They were informed at the time that if we couldn't get together there was a possibility that Mr. Davis' conciliation department would take over.

Q. How long did that meeting last?

A. Overall, with a few slight delays, I would say probably five weeks.

Q. Were there representatives of the labor unions there?

A. Yes, sir, there were.

Q. Did you know any of the gentlemen who represented 1125 at that time?

A. I didn't know them at all at that time, although I met them at the meetings there and got to know them.

Q. Now, there was a conference which reconvened in August, 1941?

A. Well, there was really a slight delay of about two weeks and it took up again. I don't believe it really was recessed.

Q. Well, did the second conference get anywhere with reference to the matter?

A. No, I am afraid not. [715]

Q. Was that for the reason that the C.I.O. people wouldn't sit in the meeting with the American Federation of Labor people?

Mr. Ryan: Mr. Examiner, this seems to me to be wholly immaterial as to what went on *Washington* at this stabilization conference and has no bearing on the issues in this case.

Mr. Riggs: I don't think Mr. Ryan has the point of these questions. These companies were always

(Testimony of Lawrence Robert Beck.)

willing to sit down and negotiate and as the thing broke up because the two big labor unions couldn't agree to sit in the same room with each other was not our fault and we should not be accused of unwillingness to bargain.

Trial Examiner Hektoen: Is Mr. Beck going to repeat what Mr. Fleet has said?

Mr. Riggs: His testimony to a great extent will be cumulative and I am going to shorten it as much as possible.

Trial Examiner Hektoen: I think these conferences are matters of record. There can be no mistake about the fact that this meeting broke up and that the meeting in Hollywood this summer was torpedoed by other influences. We will just take notice of that.

Mr. Riggs: I want to ask what the present situation is. Are you waiting for the meeting of the aircraft companies and the unions to be reconvened in Washington? [716]

A. Yes, I think we have been waiting since about July 16th.

Q. And what was the last date that you heard was fixed for the matter?

A. The last date was August 27, I believe.

Q. Has it been postponed from that date?

A. That is right.

Q. Have you anything that you would like to add in addition to what Mr. Fleet said with reference to this matter? I don't want to go all over it again because it is cumulative and there is no question about the facts.

(Testimony of Lawrence Robert Beck.)

A. No, I have nothing particularly to add except I might emphasize a point which you brought out with Mr. Fleet about two types of contracts.

Trial Examiner Hektoen: That is something afield from this, isn't it?

Mr. Riggs. Well, it only has to do with the point——

Trial Examiner Hektoen: Well, if you are just going to emphasize it, I think we will skip it.

The Witness: That is all I was going to do.

Mr. Riggs: I have nothing more, Mr. Beck.

Cross Examination

Q. (By Mr. Harrington): Mr. Beck, did any labor organization participate in the drawing up of the classifications in this blue book?

A. Yes, indirectly I would say that—you might say that [717] they did have a slight hand in it indirectly.

Q. Well, how—what do you mean by “indirectly”?

A. Well, originally Lockheed and Vega had prepared job descriptions for all of their occupations and I believe they were the only aircraft company in the Southern California area who had prepared such descriptions, and those descriptions were compiled in unison with the labor representatives of Lockheed-Vega Corporation. Every job description which was prepared for each job was signed for by the union representatives as being authentic.

That book served as a strong basis for some of

(Testimony of Lawrence Robert Beck.)

the descriptions in this report which is the reason I say they may have indirectly contributed.

Q. But at the time these things were set up did the union participate?

A. No, they did not, that is correct.

Mr. Harrington: No further questions.

Mr. Riggs: That is all.

(Witness excused.)

Mr. Riggs: I asked Mr. Wiseman to come here and testify but he asked me to let him go at 12:00 o'clock and I agreed to let him go at 12:00 o'clock and inasmuch as his testimony would be entirely cumulative with what Mr. Fleet has already said, I don't think I will call him unless there is some particular thing the Examiner would like to ask him.

[718]

Trial Examiner Hektoen: It is up to you, Mr. Riggs.

Mr. Riggs: He is at your disposal. If there is anything anyone would like to ask him, he is at their disposal but I did say I would let him go at 12:00 o'clock.

Trial Examiner Hektoen: And the whistle just blew.

Mr. Riggs: All right, Mr. Wiseman, you are excused.

Trial Examiner Hektoen: Is there anything more, Mr. Riggs?

Mr. Riggs: No, sir.

Trial Examiner Hektoen: Have we anything that we can do for the next half hour or so?

Mr. Harrington: I have nothing.

Trial Examiner Hektoen: If not we are in adjournment until 10:00 o'clock Tuesday morning, in this same hearing room.

(Whereupon, at 12:00 o'clock noon, the hearing recessed until 10:00 o'clock A. M., Tuesday, September 8, 1942.) [719]

Conference Room
Chamber of Commerce Building
San Diego, California
Tuesday, September 8, 1942 [720]

Trial Examiner Hektoen: We will be in order, please. The correct spelling of the following names shown in the record is as follows: Larimer, L-a-r-i-m-e-r, and Mergen, M-e-r-g-e-n.

It is stipulated and agreed by and between parties that Line 3 on page 268 of the record be amended to read as follows:

"A. Mr. Mineah's clerk . . ."

We will note the following in the record: Henry Golem, assistant to Mr. Newman in the Parts Plant.

Mr. Ryan: Mr. Examiner, in examining the record, we find the name of Lawrence R. Beck, B-e-c-k, a witness for the defense, whose testimony appears on page 712 to 717 in the record, is incor-

rectly spelled. It is spelled in the record as B-e-c-k, and the correct spelling is B-e-c-h-t.

Trial Examiner Hektoen: The record will be so amended.

Mr. Harrington: At this time, Mr. Examiner, I reoffer Board's Exhibits 8-A to 8-E inclusive.

Mr. Riggs: I object to those, which are already marked for identification, upon the ground that there is no proof contained in the exhibits themselves to the effect that the increases therein ordered had not been made subject to negotiation with representative foremen prior to the issuance of the memorandum. [722]

Trial Examiner Hektoen: With your explanation, they will be admitted.

(The documents heretofore marked for identification as Board's Exhibits 8-A to 8-E, inclusive, were received in evidence.)

BOARD'S EXHIBIT No. 8-A

Typed from Master Lists.

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.

January 30, 1942

Memo to: F. Cary

Purchasing Dept.

Subject: Rate Increases

Your recent recommendation for rate increases on the following men will be effective on Jan. 31, 1942:

8-3069	Humes, J. H.	Trucker—Leadman	.83N	.91N
9-3041	Macaulay, K. J.	Storekeeper—Leadman	.75	.89
8-3068	Moon, V. M.	Storekeeper—Leadman	.83	.88

We enclose a duplicate copy in order that you may advise the Shop Committeeman.

H. R. WISEMAN

BOARD'S EXHIBIT No. 8-B

Typed from Master Lists.

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
February 3, 1942

Memo to: E. T. Stewart
Purchasing Dept.

Subject: Rate Increases

Your recent recommendation for rate increases on the following men will be effective on Feb. 7, 1942:

8-4376	Alfred, Clyde	Dispatcher—Same	.75	.83
8-4412	Billger, F. C.	Storekeeper—Same	.75	.80
8-4421	D'Alfonso, J. P.	Storekeeper—Same	.75	.80
8-4511	Hanson, M. C.	Storekeeper—Same	.75	.80
8-4491	Hitson, C. E.	Storekeeper—Same	.75	.80
8-4206	Kemper, Wm. R.	Leadman—Supr.	.96	.99
8-4443	Roberts, J. R.	Planning Clerk—Same	.75	.80
8-4200	Sandlin, C. H.	Leadman—Supr.	1.00	1.02
8-4607	Shults, J. C.	Typist—Planning Clerk	.83N	.83N
8-4285	Wilee, P. H.	Leadman—Supr.	.86	.99
8-626	Adams, R. M.	Planning—Clerk- Leadman	.89N	.99N
8-627	Hannon, G. L.	Store.—Surp. Sub Con. Mat.	.75	Sal.
8-622	Johnson, N. W.	Dispatcher—Asst. Project Lead Dispatcher	.91	Sal.
8-621	Kline, D. F.	Plan. Clerk-Ass't Shop Order Supr.	1.01	Sal.

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8-623	Otte, Emerson	Plan. Clerk—Supr.		
		Mat. Sched.	.94N	Sal.N
8-624	Slattery, W. P.	Dispatcher, Asst. Proj.		
		Lead Dispatcher	.91	Sal.
8-625	Smith, J. E.	Plan. Clerk—Supr.		
		Order Prep.	.93N	Sal.N

We enclose a duplicate copy in order that you may advise the Shop Committeeman.

H. R. WISEMAN

BOARD'S EXHIBIT No. 8-C

Typed from Master Lists.

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
February 12, 1942

Memo to: E. T. Stewart
Purchasing Dept.

Subject: Rate Increases

Your recent recommendation for rate increases on the following men will be effective on Feb. 14, 1942:

8-4374	Engelage, G. H.	Dispatcher	.75	.80
8-4517	Highleyman, Daly	Dispatcher	.75	.80
8-4802	Norris, F. A.	Storekeeper	.75	.80
8-4444	Reynolds, W. H.	Storekeeper	.75	.80

We enclose a duplicate copy in order that you may advise the Shop Committeeman.

H. R. WISEMAN

BOARD'S EXHIBIT No. 8-D

Typed from Master Lists.

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
February, 19, 1942

Memo to: F. Cary
Purchasing Dept.

Subject: Rate Increases

Your recent recommendation for rate increases on the following men will be effective on Feb. 21, 1942:

8-3023	Davin, Brendan	Leadman—Same	.83	.88
	Joseph			

We enclose a duplicate copy in order that you may advise the Shop Committeeman.

H. R. WISEMAN

BOARD'S EXHIBIT No. 8-E

Typed from Master Lists.

Consolidated Aircraft Corporation
Lindbergh Field, San Diego, Calif.
March 16, 1942

Memo to: E. T. Stewart
Purchasing Dept.

Subject: Rate Increases

Your recent recommendation for rate increases on the following men will be effective on Mar. 21, 1942:

822 *Consolidated Aircraft Corporation vs.*

8-4468	Dohme, Denver	Dispatcher—Lead		
	Willard	Dispatcher A	.83N	1.06N
8-4465	Douglas, Sherman	Trucker A—Same	.75	.80
	Alfred			
8-4646	Graham, William	Dispatcher—Lead		
	Francis	Disp. A	.91N	1.06N
8-4748	Jeannes, Calvin	Trucker A—Same	.75	.80
	Douglas			
8-4763	Mikelson, Melvin	Trucker A—Same	.75	.80
	E.			

We enclose a duplicate copy in order that you may advise the Shop Committeeman.

H. R. WISEMAN

Mr. Riggs: Mr. Newman.

GEORGE J. NEWMAN

a witness called by and in behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs): Will you give your full name and address to the stenographer, please?

A. George J. Newman, 5808 El Campo Terrace, Fort Worth, Texas.

Q. Are you employed by Consolidated, Mr. Newman?

A. I am.

Q. When were you first employed by Consolidated?

A. I can't remember the exact date; somewhere in 1924.

Q. Was that at the Buffalo Plant?

(Testimony of George J. Newman.)

A. No, that was in East Greenwich, Rhode Island, when the company was first organized.

Q. How many employees did it have at that time?

A. I was one of the first, I guess. We had about seven or eight.

Q. Were you still employed by the company when it moved to [723] Buffalo?

A. That is correct.

Q. When did it move to Buffalo?

A. I can't remember the exact date it moved to Buffalo.

Q. Do you recall how many years you were there?

A. In Buffalo?

Q. Yes.

A. I have been with the company ever since then, if that's what you are getting at.

Q. Were you with the company when it moved from Buffalo to San Diego?

A. That is right.

Q. Will you state some of the positions you held with the company?

A. Well, I began working in the wing department and I transferred from there to the final assembly, I could probably go through the whole rigmarole of jobs right down the line; I worked in most every department.

Q. Have you flown the company's planes?

A. All they have built to date.

Q. What kinds? Land planes or seaplanes?

A. One of each type, at least.

Q. Were you employed by the company in 1940 and 1941?

A. Yes, I was.

(Testimony of George J. Newman.)

Q. What was your position at that time in 1940?

[724]

A. I believe early in 1940 I was assistant factory manager and assistant chief test pilot at the home plant. I was transferred then to the Parts Plant.

Q. When was the Parts Plant opened to the employees to work in?

A. I would say about in May, I believe we started moving the machinery.

Q. Of 1941? A. Yes.

Q. Prior to that time you had been in the Home Plant as assistant factory manager and—

A. Assistant chief test pilot, that's right.

Q. When were you appointed the manager of the Parts Plant?

A. I was appointed just before we began to move down there. I can't remember the exact date.

Q. How long had the Parts Plant been in that building? A. Pardon?

Q. How long did they take to build the Parts Plant?

A. Oh, my guess would be nine months we were building it, roughly nine months.

Q. Was that built by the Defense Plant Corporation? A. Yes.

Q. Have you an approximate idea of its cost?

A. No, I do not have any idea of its cost.

Q. Would you accept the figures of 20 to 22 million dollars? [725]

A. I would, including machinery.

(Testimony of George J. Newman.)

Q. How many employees was that built to accommodate?

A. Well, we figured originally about 15,000; we were up to 18,000 when I left there.

Q. Do you know Mr. Arthur J. Fisher?

A. Not personally, only meeting him in a business way.

Q. When did you first meet him to know who he was, by name?

A. I don't know the exact date. I met him at the time when he came into my office with some grievances or other in connection with union matters.

Q. Can you fix the time?

A. I can't fix the time or the date.

Q. Was it in 1941 or 1940?

A. It was some time after we had opened the Parts Plant.

Q. Did he come into your office frequently?

A. Yes. He came in my office very frequently.

Q. What was the nature of his visits?

A. Mostly petty grievances, a lot of them, more or less imaginary, that became very monotonous, after awhile, to keep hearing.

Mr. Ryan: I object to that as a conclusion of the witness and move it be stricken from the record.

Trial Examiner Hektoen: It may stand.

Q. (By Mr. Riggs): Is there a difference between a formal grievance and petty grievances?

[726]

A. I understand formal grievances are supposed to be written out; these were never in writing.

(Testimony of George J. Newman.)

Q. And are those regarded by the shop committee and the management in their meetings as petty grievances when they are not written out?

A. I believe they are.

Q. I show you Respondent's Exhibit 2 dated July 23, 1940, a memorandum to shop personnel, subject: Leaving the department, and ask you if that was issued by your orders, and signed by you?

A. Yes, sir. I dictated and issued the orders.

Q. Will you state the circumstances under which that was issued?

A. That was intended primarily to control the promiscuous roving and sight-seeing between departments.

It might be well to state here there is quite a difference between the Home Plant and the Parts Plant, the Parts Plant being composed of mainly bench assemblies, small assemblies which didn't require the men to leave their department in the line of duty. At the Home Plant they were more or less required to go between departments to hang things on airplanes, and so forth.

Q. The Parts Plant was built in order that there should be a continuous flow of parts from one end of the plant to the other? Is that not correct? [727]

A. That is more or less correct. As I said, it was small bench assemblies, where the men had no real reason to leave one department and go to another department. However, there is always a lot of curiosity on people's part, and roaming from one place to another, and that was an attempt to stop

(Testimony of George J. Newman.)

the roving. It was aimed at all parties, as it stated.

Q. The Home Plant, as I understood you to say, maintains a large number of buildings scattered around quite a large acreage. Is that correct?

A. That is correct.

Q. And the jobs necessitated the men going from one building to another at certain times?

A. I would say there are a number of men required to do that, yes.

Q. Or was there any circumstance leading up to the issuance of this bulletin of July 23, caused by men leaving the Parts Plant to go down to No. 1?

A. No, that's not quite possible to do that.

Q. Mr. Newman, it has been testified here that in the opinion of one witness who testified, with relation to this bulletin, that that was the purpose of the bulletin, to prevent men from the Parts Plant getting to Plant No. 1.

A. I would say with reference to that, whoever interpreted it that way was mistaken. It wasn't for that purpose, because, in the first place, to get from the Parts Plant to Plant No. [728] 1, a man would have to pass guards to get out, which necessitated having some kind of an additional permit, in order to get from one plant to the other. He can't get out unless he is sent by somebody.

Q. Was it possible to get through the entrance to the Home Plant wearing the button of a department, by one who was working in the Parts Plant?

A. I believe it was possible to do that. I think

(Testimony of George J. Newman.)

the buttons were more or less interchangeable, but the rover's button had no significance in the Home Plant, because that system was not in vogue at the Home Plant. In other words, the guards at the Home Plant had no instructions as to what to do about rover's buttons, and anybody that went to the Home Plant wasn't apprehended whether they did or did not have one.

Q. When you went over as manager of the Parts Plant Mr. Kelly remained as manager of the Home Plant? A. Yes, sir.

Q. Did Mr. Kelly put in force at the Home Plant any rules or regulations with reference to the issuance of rover's buttons?

A. Mr. Kelly, to my knowledge, did not. I am quite sure he did not. He had several discussions with me about it and remarked how well it was going at the Parts Plant, but he did not put it in, because, as I said, of the difference in [729] the nature of the work.

Q. Have you told us all you want to with reference to the circumstances of issuing this bulletin of July 23, Respondent's Exhibit 2?

A. I don't think there is much more to be said on that.

Q. Did this apply to all persons in the employ of the company, whether union men, non-union men, or shop committeemen?

A. Exactly what the notice says; it applies to everybody.

Q. I also show you Respondent's Exhibit 3, a

(Testimony of George J. Newman.)

memorandum dated August 26, 1941, a memorandum to all department heads, signed: George J. Newman, and ask you if that was issued by you?

A. It was issued by me.

Q. Will you state the circumstances which led up to the issuance of this bulletin?

A. Well, I believe the first notice said that all personnel were involved. We found out afterwards there were certain people that had to be exempted from it. We made those exemptions in a later bulletin. We also jogged the foremen's memory, that they were still required to issue rover's buttons to the rest of the boys that weren't marked exempt.

It was mainly people that had business to rove, like, maintenance men, janitors, and so forth.

Q. When did you inaugurate the system of having red buttons issued by the foremen, as rover's buttons? [730]

A. We inaugurated them when the first memorandum was put out.

Q. The first memorandum or the second?

A. The first memorandum.

Q. That was the memorandum of the 23rd of July? A. That is right.

Q. And this memorandum of August 26, 1941 exempted mechanical maintenance, electrical maintenance and two or three other departments from its scope. Is that correct?

A. That is correct, those people who had business, their jobs comprised mainly of roving from one plant to another, to repair machinery, sweeping

(Testimony of George J. Newman.)

the floor; not tied down to one particular place.

Q. The stock material chasers, department 58, were obliged to go from one place to another?

A. That is correct, the stock chasing department, and they served the entire factory.

Q. How about janitors?

A. Janitors serve the entire factory.

Q. What is the duty of the janitors?

A. The duty of the janitors is to sweep the place and keep it clean.

Q. Inside the factory or out?

A. Inside and outside, although we have mechanical sweepers that do most of the outside work.

[731]

Q. What necessity was there for janitors to do any outside work?

A. The main function the janitor performed outside was sweeping up after the lunch hour, when the workmen strewed papers and lunch all over the yard, then we had crews that went outside and swept.

Q. Did you also have mechanical sweepers?

A. We had a mechanical sweeper that swept the bulk of the yard.

Q. Were there many men in the Parts Plant whose jobs necessitated their working in the open air?

A. As compared to the Home Plant, no, there were very few required to work outside, none of them performing aircraft jobs, with the exception, I think, just before I left, when the shipping depart-

(Testimony of George J. Newman.)

ment got crowded out, we required them to work outside to box spares for shipment.

Other than that, the only people working outside were the mechanical maintenance and the electrical maintenance, and so forth.

Q. What type of men were required to work outside at the Home Plant?

Mr. Ryan: Mr. Examiner, I can't see the relevancy of this. We don't care whether they worked outside or inside, so far as the issues in this case are concerned.

Trial Examiner Hektoen: You are getting to the janitors, [732] are you, on that?

Mr. Riggs: Yes.

Trial Examiner Hektoen: You may continue.

The Witness: Will you repeat that?

Trial Examiner Hektoen: Read the question, Miss Reporter.

(Question read.)

The Witness: Well, a great deal of the final assembly is done outside, erection and final assembly.

Q. (By Mr. Riggs) Did you attend a meeting in November of 1941, in which a penciled grievance was presented by Mr. Fisher, with reference to a conversation he had had with Mr. Mineah.

A. I could never remember seeing anything in writing on it, no.

Q. Do you recall whether you were at that meeting or not, or any meeting at which Mr. Fisher and certain members of the union, and Mr. Powell and

(Testimony of George J. Newman.)

Mr. Golem and yourself were present, and a grievance was reported by Mr. Fisher with reference to a conversation he had had with Mr. Mineah?

A. I cannot, I cannot be sure whether it was taken up at a grievance meeting or whether Fisher spoke to me in the hall, or elsewhere. He did complain about the manner in which Mr. Mineah addressed him.

Q. Did he complain about Mr. Mineah swearing at him? [733] A. Yes.

Q. What was your reply with reference to it?

A. I believe I told him I would see the thing was straightened out, that Mineah was straightened out on it; or that he understood we didn't allow people to go around swearing at the men.

Q. Was it contrary to the company's policy to permit the foremen or assistant foremen or leadmen to swear at the workers?

A. We forbid all abusive language such as that, yes.

Q. At any time prior to that time did you ever have any conversation with Mr. Fisher about him leaving his department?

A. I can't recall that I had any direct conversation regarding him leaving his department.

Q. Did you ever have any conversation with Fisher in which you told him, in substance, that neither one of these bulletins, Respondent's Exhibits 2 or 3, applied to him? A. Never.

Q. Under the rules with reference to a rover's button, was it necessary for a union shop committee-

(Testimony of George J. Newman.)

man to obtain a rover's button to leave his place in his own department and visit, or talk with the men in the same department?

A. The notice was not issued to stop men from carrying on normal conversations within their own departments; that was [734] under the jurisdiction of the foreman that was running the department.

Q. Was that bulletin intended to prevent men from leaving their own department and going to another department without a rover's button?

A. It was.

Q. And it says on its face: Bright red buttons are being issued to the foremen, who will see each man leaving the department is supplied with one, who will return same when mission is completed."

Do you recall that? A. That is correct.

Q. And that didn't apply or cover by its terms the occasion when a union shop committeeman left his bench or place of work to talk to other people in the same department?

A. No. That was entirely up to the foreman to see that was controlled within reason, and I don't think it was abused.

Q. I think you said in the Parts Plant most of the departments were small and fairly centralized?

A. They were more or less self-contained, to a point where they didn't require a man to go between departments to complete his job.

Q. Do you recall any meeting with Mr. Fisher on the 13th of December, 1941? [735]

A. I don't recall a meeting with him; I recall

(Testimony of George J. Newman.)

him coming into my office, if that's what you mean.

Q. Will you tell the Examiner the events that led up to his coming to your office, and what he said when he got there, and what you said. First, begin with the events leading up to this visit.

A. Well, some time during the afternoon, I can't recall what time, Fisher called me on the phone and told me in substance, I can't remember his exact words: That there was a petition going around the plant about men working on Sunday. I told him I had no knowledge of that petition.

Q. Had you knowledge of a petition dated December 11, 1941, Respondent's Exhibit 12, which I show you?

A. Yes, I had a knowledge of that petition, and I had forwarded it to people at the Home Plant for action.

Mr. Riggs: Read the answer.

(Answer was read.)

Q. (By Mr. Riggs) Do you remember approximately how many men at the Parts Plant had signed the petition, Respondent's Exhibit 12?

A. I can't remember the exact figure. It seems to me in the neighborhood of 400 people.

Q. This petition states: Gladly volunteer their time to perform this task during daylight hours, but we again demand immediate action. [736]

A. That is right.

Q. That was the petition you forwarded to the Home Plant for action?

A. That is correct.

(Testimony of George J. Newman.)

Q. This petition, Respondent's 12, refers to a loss of man hours during a blackout of December 10, 1941. Would you state what occurred on December 10, 1941, and what loss of man hours there was, if any?

A. I recall on December 10, we had an air raid alarm which caused us to blackout the complete plant and, consequently, throw all the workmen completely out of work. They were not allowed to leave the plant until quite a late hour, couldn't even go home. I believe that is what caused that petition to be circulated by the men.

Q. Whose orders were they, that they couldn't leave the plant to go home?

A. The Army and the local police.

Q. How many man hours, approximately, would you judge as lost?

A. As I recall the time figured up in man hours in the Home Plant and Parts Plant would be the same as is required to build one complete B-24 bomber.

Q. At the time of this blackout, was the roof and sides of the plant composed of glass?

Trial Examiner Hektoen: Read the question.

[737]

(Question read.)

The Witness: There were skylights in the roof and glass along the sides of the building, yes.

Q. (By Mr. Riggs) Did Mr. Stark telephone you on December 13th?

(Testimony of George J. Newman.)

A. Yes, Mr. Stark called me on the phone on December 13th, in the afternoon, somewhere around 3:00 o'clock.

Q. What did he say?

A. He said that there was a man in his department whom he thought was Fisher, circulating through his men, either talking against or for some kind of a petition that they were signing.

Q. Where was Mr. Stark in the department?

A. His department was in the wood mill, which is at the north end of Building 3.

Q. Is that building separated by a substantial space from the rest of the Parts Plant?

A. Approximately 400 feet, 350 to 400 feet.

Q. How far away was it from the building where Mr. Fisher was working?

A. Mr. Fisher was working in Building 3, about 400 feet from the north end, and on the second floor which would be, approximately, if he were in the wood mill, which would be approximately 900 to 1000 feet from his work.

Q. Did you receive a telephone call from Mr. Watt, foreman [738] of the tool room?

A. I did.

Q. What did Mr. Watt say?

A. He said substantially the same thing that Ted Stark had said.

Q. What did you do then? Did you telephone to Mr. Mineah?

A. I called Mr. Mineah on the phone, and at-

(Testimony of George J. Newman.)

temped to find out if Fisher had left his department, where he was.

Q. What did you say?

A. I believe I requested if Fisher had left the department and if he had obtained permission to leave. Mr. Mineah said: No, he had not obtained permission to leave, and he had no knowledge of his being out of the department.

Mineah was on the second floor and, naturally, he couldn't see Fisher from where I was calling him on the phone.

Q. And then what happened?

A. Mineah called me back to tell me Fisher was not in his department and he didn't know where he was.

Q. What happened next? Did you ask to have Mr. Fisher report to your office?

A. No, we attempted to find Fisher then, and couldn't find him. I asked Mineah to find him, see if he could find him.

Q. Then what happened?

A. Well, about that time the whistle blew at 3:30, the [739] quitting whistle, and it couldn't have been over a minute after that that Fisher opened the door of my office and walked in.

Q. Had you requested Mr. Mineah to tell him to come to your office if he found him? A. No.

Q. When Mr. Fisher opened the door to your office and walked in, what was said by you and what was said by him?

A. I asked Fisher what he was doing out of his

(Testimony of George J. Newman.)

department, and did he have permission to leave, and he said: No, he didn't have permission to leave the department.

I asked him if he had a rover's button, and he said, No, he didn't have a rover's button.

Q. Did you call him on that occasion a slant-eyed Jap, or a Jap lover, or a God damned communist?

A. I didn't use any language with him like that. I did comment that we were at war, and in my opinion this petition in question here was a patriotic move on the men's part themselves to volunteer their time to come in and blackout the plant, so that they could continue to work, and I thought he had no reason to interfere with what they were doing.

Q. Did you say anything about him staying on the job in the future?

A. I wanted him to stay on the job, and that he was on thin ice, and I was warning him, and not threatening him. [740]

Q. Did you say anything about his obtaining specific permission from the foreman if he desired to leave, in the future? A. I did.

Q. What was that?

A. I told him he was to obtain permission from his foreman before he left the department. He well knew that.

Q. I believe you said on this occasion he did not have a rover's button?

A. He did not. He admitted he had no rover's button.

(Testimony of George J. Newman.)

Q. Did you ask him whether he had obtained Mr. Mineah's permission to leave?

A. I did, and he said: No.

Q. Subsequent to that time do you recall any meeting between the union and any of the management, at which the subject of raincoats for the janitors was discussed?

A. I believe there was a meeting with management at which I did not attend, a grievance meeting, at which that subject was brought up.

Q. Who told you about it, after that meeting?

A. My two assistants, Golem and Powell.

Q. What was the subject of the conversation you had with them?

A. The subject of the conversation was, would we supply the colored janitors with raincoats, hats and boots, the same as [741] we supplied the maintenance men.

Q. The maintenance men are the men you described whose jobs kept them out in the open practically all of the time?

A. Not necessarily all the time. In bad weather, if we had anything not in storage, the maintenance men went out to cover the various parts with tarpaulins, and actually got out in the rain, but they were the only men forced or requested to work in the rain.

Q. You said most of the janitors' duties that took them outside, were to clean up after the lunch hours?

A. That is right.

(Testimony of George J. Newman.)

Q. Was it the practice of employees to go outside for lunch in the rain?

A. I never saw any of them out in the rain.

Q. What was further said at this discussion by you, with Mr. Golem and Mr. Powell? Did you state that the company would furnish raincoats to the colored janitors?

A. We decided we would not supply janitors with raincoats, hats, or boots, inasmuch as their duties didn't require them to be outside, and we didn't buy raincoats and hats for all the rest of the men in the plant.

Q. Was that statement of the company's attitude with reference to that matter transmitted to Mr. Fisher?

A. I believe it was.

Q. On January 1, 1942 were you with Mr. Golem and Mr. [742] Powell, any place in the Parts Plant?

A. January 1, 1942, around 8:30 or 9:00 o'clock in the morning, I picked up Golem and Powell and we started on a tour of inspection of the plant.

Q. Where did you begin?

A. At Building No. 1, the south building; we covered the main aisle right through the plant. We went through Building 1, entered Building 2, and started down the aisle in Building No. 2.

Q. When you started your tour of inspection did you expect to see Fisher anywhere?

A. I did not expect to see Fisher. I was not looking for Fisher or anybody else in particular.

Q. Did you know he was out of his department at that time?

(Testimony of George J. Newman.)

A. I hadn't any idea he was out of his department.

Q. Did you meet him? If so, where?

A. I ran into Fisher about a little north of the center of Building No. 2. He was coming up the aisle and we were going down the aisle.

Q. Was he talking with anybody?

A. Yes, he was talking with a colored janitor. I believe he was—he wasn't the head janitor; he was some kind of a union committeeman.

Q. Did Mr. Fisher have a rover's button, in sight?

A. Fisher had no rover's button in sight. That was one of [743] the reasons that prompted me to stop him.

Q. If he had had a rover's button would you have stopped him?

A. The chances are I would never have stopped him.

Q. Did you ask him if he had a rover's button?

A. I asked him where he was going, and if he had a rover's button.

Q. What did he say?

A. He started to explain where he was going, and I insisted did he have a rover's button, and he reached into his right hand pocket and pulled out a rover's button.

Q. Did you on that occasion tear a rover's button off his shirt?

A. I couldn't have torn it off his shirt, when he had it in his hand.

Q. The answer is: No?

A. Definitely no.

(Testimony of George J. Newman.)

Q. What else was the subject of conversation?

A. Fisher began to explain to me what he was doing, namely: trying to get the janitors raincoats and rain hats. I told him that had already been settled and I asked him if he had permission from his foreman to leave, and sent him back.

Q. What did he say? A. He said: No.

Q. Where did you and Mr. Golem and Mr. Powell go from [744] there?

A. I told Fisher to return to his department.

Q. Where did you go then?

A. Then we returned to Fisher's department also, to Mr. Mineah.

Q. Did you talk with Mr. Mineah?

A. By the time we arrived Mr. Mineah wasn't there, and one of the clerks eventually found him. I asked him if he had given Fisher permission to leave and he said: No. Then we checked with his assistant foreman, or leadman, I am not sure which he was, Gahlbeck, and Gahlbeck said he had not given him permission to leave.

Fisher had told me at the time I stopped him he got—he could not find Mineah, but he had received permission from Gahlbeck.

Q. Did you check with his clerk, Gahlbeck?

A. I checked with the head clerk and the head clerk said he had issued a rover's button because Fisher had told him he had permission to leave.

Q. Was it the head clerk, or the clerk named Pickett?

A. I don't know; there are two clerks there, and

(Testimony of George J. Newman.)

I am not sure who it was, so far as the clerks were concerned.

Q. After talking with Mr. Mineah and his assistant, did you go to where Mr. Fisher had returned to his work?

A. No. After talking to Mineah and finding he did not [745] give Fisher permission I called Gahlbeck down to the desk and Gahlbeck said he had not given permission either. We then sent for Fisher and when he arrived I told Mineah to make out his time, that he was through.

Q. Subsequent to Mr. Fisher's discharge, were you concerned in any of the meetings where the subject of his reinstatement was brought up?

A. I was not.

Q. When were you transferred to the command of the Texas Plant?

A. About March of this year.

Q. The Examiner asked, Mr. Newman, if you knew where the initiation, with reference to Respondent's Exhibit 12, came from. Can you tell us anything with reference to that?

A. I haven't any idea where it came from. The first time I saw it was when it came into my office; there must have been about 12 of these individual things clipped together in various groups, two or three in a group, that were signed, and brought into my office. That was the first I knew they were in the plant at all.

Q. This other petition about working time and

(Testimony of George J. Newman.)

a half on Sunday, did you know such a petition was being circulated at the Home Plant?

A. I had heard by telephone that it was being circulated at the Home Plant, but I had no knowledge of it being circu- [746] lated in the Parts Plant.

Q. After Respondent's Exhibit 2 of July 23 was issued, Mr. Fisher said he immediately went to George Newman when they put it on the board, and asked him if that included: "Me and the other committeemen in the plant," and he said, "No." Did you have any conversation of that nature with Fisher? A. None whatsoever.

Q. Did you ever tell him that bulletin, Respondent's Exhibit No. 2, did not apply to him or any of the other shop committeemen?

A. I never told any of the union men that, nor anybody else that.

Q. On the August 26th bulletin, Respondent's Exhibit 3, did you ever have any conversation with Mr. Fisher to the effect that that didn't apply to him, when he left his department?

A. No, I did not. If I had intended it would exempt the union committeemen or anybody else, it would have been on that second notice, because I specifically there exempted certain people from it. I certainly wouldn't have left them off it if I had intended to exempt them.

Q. He says, at page 276, when this latter bulletin of August was put up: "* * * I went in and asked Mr. Newman personally myself if this—if we must abide by this bulletin.

(Testimony of George J. Newman.)

“In other words, we could not leave our building, and he said to me: ‘As long as you proceed to get your button [747] and have permission to leave, that is what you are supposed to do.’ ”

Do you recall any conversation with reference to that?

A. I do not recall it, but chances are I might have told him that. I don’t remember.

Q. With reference to this penciled grievance which Mr. Fisher had signed, complaining that Mr. Mineah had sworn at him, he said Mr. Newman and Mr. Powell both said they would talk to Mr. Mineah, and kind of put him in his place a little bit. Do you remember having a conversation like that with him?

A. I think perhaps we might have had some such conversation with him regarding swearing, yes.

Q. He says: “they were going to tell him in regards to the language he used and the way that he approached me and told it to me.” That is on page 279. Do you recall telling him that?

A. Undoubtedly we told him that.

Q. Did you tell him at any time that you were going to override Mr. Mineah’s instructions to him contained in the interview where he was accused of swearing, that he could not leave his department without Mr. Mineah’s permission?

A. Absolutely not.

Mr. Riggs: That is all.

(Testimony of George J. Newman.)

Trial Examiner Hektoen: We will have a short recess be- [748] for cross examination.

(Short recess.)

Trial Examiner Hektoen: We will be in order, please. All right, Mr. Harrington.

Cross Examination

Q. (By Mr. Harrington) Mr. Newman, are grievances supposed to be written out?

A. It is my understanding that a formal grievance is supposed to be written out.

Q. Isn't it a fact that it is not necessary to write them out unless they cannot be settled without reducing them to writing?

A. It is almost impossible to handle the number of things that might come up, that might be of a complicated nature, unless you have them in writing.

Q. Had anybody ever instructed Fisher that grievances had to be written out?

A. I can't say whether they had or not.

Q. Had anybody instructed you grievances had to be written out?

A. Nobody had instructed me, no.

Q. So far as you know, there is no official rule that they must be written out?

A. I don't know. I don't know of any official rule one way or the other on it. [749]

Q. Does the shop chairman of the union serve the entire plant, upon call by the committeemen?

A. Does it what?

Q. The shop chairman of the union?

(Testimony of George J. Newman.)

A. Does he serve the entire plant?

Q. Yes, upon call by the committeemen?

A. I think that he does. However, in that connection, since I was manager of the Parts Plant, I requested a number of times that the union give me an outline of his duties, of the duties of those people, and I never received it.

Q. In what form was that request?

A. In what form?

Q. Yes. A. Verbally, in the meetings.

Q. When janitors work outside, what work do they do?

A. Janitorial work, sweeping, cleaning up, emptying trash barrels, and so forth.

Q. Do they have to work outside when it is raining?

A. I would say their duties did not require them to work outside when it is raining.

Q. If it rained for some considerable length of time would things get bogged down and necessitate their going outside in the rain?

A. I don't know how a man could be expected to clean outside in the wet. I never saw a broom swept in the rain, yet. [750]

Q. Were they required to pick up things on the outside?

A. Picking up things was usually done by the mechanical maintenance.

Q. Isn't it a fact that during periods when it rained for days at a time that janitors had to work outside. A. Not to my knowledge.

(Testimony of George J. Newman.)

Q. Wasn't it agreed at a meeting between management and the union to allow janitors raincoats?

A. It was not.

Q. Did the janitors operate the incinerators?

A. Some janitors operated incinerators, and some mechanical men.

Q. Did they operate those incinerators when it rained?

A. It was obviously impossible to operate them because the material got wet and it wouldn't burn.

Q. When Fisher came to your department on December 13th, what did you tell him at that time? That is, in reference to that petition?

A. I don't quite understand the question.

Q. On December 13, you have testified Fisher came to your department about a petition with reference to working on Sundays——

A. He came to my office.

Q. He came to your office. What did you tell him at that time? [751]

Read the question to him.

(Question read.)

The Witness: I don't think Fisher did very much of any telling. I did most of it.

Q. (By Mr. Harrington) Did you call him a Jap lover?

A. I called him nothing of the kind.

Q. Or a Hitlerite? A. I did not.

Q. Or a Communist?

A. I called him neither one of the three things.

Q. What did you say to him?

(Testimony of George J. Newman.)

A. What did I say to him?

Q. Yes.

A. I asked him where he was, as I have brought out before, what he was doing out of his department.

Q. Did you say anything else to him?

A. I can't remember the exact conversation. I believe I made some remark about that we were at-war. I can't remember the exact words.

Q. At that time wasn't Fisher presenting a grievance in his official capacity?

A. No, he was not.

Q. Why wasn't he?

A. Because he had no reason to present any kind of a grievance at that time. He usually made those on company time. [752] He was on his way home.

Q. This petition was requesting him to work on Sundays for time and a half, or nothing, wasn't it?

A. It was not requesting him to do anything.

Q. What did it state?

Mr. Riggs: I object to that; it is in evidence.

Trial Examiner Hektoen: He can give us some idea; go ahead, Mr. Newman.

The Witness: In my opinion the petition stated that if the men wanted to work and be paid they could be paid time and a half, or they could work for nothing, either one.

Q. Didn't the contract provide for double time?

(Testimony of George J. Newman.)

A. The union contract, as I understand, did provide for double time.

Q. Then why do you say Fisher wasn't there in official union capacity?

A. Because I had no knowledge of a petition being circulated in the plant, and Fisher didn't come in to me with any question about it.

Q. What did he come for?

A. He came up because I was looking for him, and he knew it.

Q. How do you know he knew it?

A. How did I know he knew it?

Q. Yes. [753]

A. Well, perhaps I don't know he knew it. I would take it he knew it.

Q. Were the foremen told to talk to the men about working on Sunday, December 13th?

A. They were not.

Mr. Harrington: I have no further questions.

Redirect Examination

Q. (By Mr. Riggs) Tell us about these meetings with the union where grievances were taken up? How would they usually operate?

A. Well, the grievances were usually taken up at a meeting with management, they were usually very petty grievances that we could settle immediately, right on the spot, which were settled immediately.

Q. Can you give the Examiner an idea of how many were apt to be brought up at a meeting? I don't mean any particular meeting, but—

(Testimony of George J. Newman.)

A. I would say they ran from three to ten grievances. They were mostly regarding working conditions, poor ventilation in the lavatories, and things that were of a nature that we could very quickly decide we were wrong, and could fix immediately.

Q. Were those grievances presented by the union shop committeemen orally?

A. Orally, yes, in most cases, yes. [754]

Q. Where it was possible to settle them on the spot, would the assembled meeting settle them?

A. Yes, and the people in the room were so informed, that they would be settled.

Q. When a grievance came up about something you were not acquainted with, what was the practice?

A. The usual practice there was to tell the boys we would look into it and let them know at the next meeting. Some involved quite an extensive expenditure of time, and money, and we naturally wanted to look into them and find out just exactly what they involved before we went ahead and told them: Yes or No.

Q. Did the management usually report at the next meeting as to what they would do with reference to the grievance?

A. If the management didn't report, the union at that time would ask what had been done about it, and I think they were informed as to what was being done.

Q. Do you remember any particular occasions when management and union didn't get together on a solution of a grievance?

(Testimony of George J. Newman.)

A. At the Parts Plant I can't remember any outstanding grievance we did not get together on.

Q. You were asked by Mr. Harrington as to whether the grievance must be in writing. Are you familiar with paragraph 9 of Board's Exhibit 3, which is the Union agreement as amended to March 5, 1942? [755]

A. I am not conversant with it enough to be able to quote it word for word.

Q. This was adopted about the time you left for Fort Worth? A. When was the date?

Q. March 5, 1942.

A. Yes, about that time.

Q. Prior to that time, however, it was a fact that a great many of the grievances had been submitted orally to this meeting?

A. Yes, the majority of them.

Mr. Riggs: That is all.

Trial Examiner Hektoen: Anything more, Mr. Harrington?

Recross Examination

Q. (By Mr. Harrington) On January 1, 1942, wasn't there a back log of grievances?

A. Not to my knowledge there was not.

Q. How often was this meeting held, you have just testified to, between union and management?

A. How often?

Q. Yes.

A. I believe it was held monthly, once a month.

Q. And at that time, any grievance that couldn't be settled, was reduced to writing, was it not?

(Testimony of George J. Newman.)

A. I can't be sure of that procedure.

Mr. Harrington: I have no further questions.

[756]

Mr. Riggs: Thank you, Mr. Newman.

Trial Examiner Hektoen: That is all, Mr. Newman. Thank you.

(Witness excused.)

Mr. Riggs: Mr. Henry Golem.

HENRY GOLEM,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Will you give your full name and address to the stenographer?

A. Henry Golem, 3535 Jackdow Street, San Diego.

Q. Are you employed by Consolidated, and if so, in what capacity?

A. Assistant factory manager.

Q. Of what factory? A. Plant 2.

Q. In San Diego? A. Yes.

Q. How long have you been such assistant factory manager?

A. Ever since Mr. Newman left, which was in March, I believe.

Q. Of this year? A. Of this year.

(Testimony of Henry Golem.)

Q. Prior to March, 1942, had you been employed by Consolidated at Plant 2? [757]

A. Yes, I was assistant to Mr. Newman.

Q. Did your position change when Mr. Newman left?

A. Yes, in that I was one of Mr. Newman's assistants; then I worked for Mr. Ezard.

Q. What I want to find out, Mr. Golem, is what change in your status occurred when Mr. Newman left for Texas?

A. Practically none, except that I had a different boss.

Q. Who is your boss at the present time?

A. Mr. Ezard.

Q. He is the factory manager of Plant 2?

A. Yes.

Q. Do you remember New Years day of this year? A. Yes.

Q. Were you with Mr. Newman and Mr. Powell when they met Mr. Fisher on that day?

A. Yes.

Q. Tell us where you met him.

A. We met him in Building 2. He was talking to one of the colored janitors, and when we came up there the colored janitor started to walk away and Mr. Newman approached Mr. Fisher and asked him where his rover's button was, and he asked him what he was doing here, and he said, "Why haven't you a rover's button?"

And he said that he had one, and he reached in his pocket and got one out. [758]

(Testimony of Henry Golem.)

He told Mr. Fisher, then, to go back to work.

After he had left, why, Mr. Newman says, "I am going down there and check that rover's button." So all three of us walked down to Mr. Min-eah's office, where he checked the rover's button, to see whether he had issued any.

Q. Did Mr. Newman tear the rover's button off of Mr. Fisher's shirt? A. No.

Q. Did Mr. Fisher have a rover's button where it was visible? A. No.

Q. Did you know you were going to meet Mr. Fisher when you started out with Mr. Newman?

A. No.

Q. Had you ever given Mr. Fisher permission to leave his department without obtaining his foreman's consent? A. No.

Q. Did you ever have any talks with him about it at all? A. No, I didn't.

Q. Did you know him by sight?

A. Yes.

Q. Did you know him to talk to?

A. No, I don't believe I have ever had any conversation with him.

Q. Did you sit on this committee of union and management [759] which discussed grievances, from time to time?

A. I was in one meeting only.

Q. What meeting was that?

A. That was one meeting Mr. Newman couldn't attend, and which Mr. Powell and I went to, into this meeting.

(Testimony of Henry Golem.)

Q. When was that?

A. I don't know. I know it was just prior to the time Mr. Fisher was discharged, probably three or four days before; I don't know; it might have been two weeks.

Q. Well, at that meeting did the question of raincoats and rubber boots for the janitors come up?

A. There was something mentioned about raincoats.

Q. What did you or Mr. Powell say with reference to it?

A. I don't remember what we said, as to what we were going to do about it. Usually, this being the first meeting that I was there, why, we didn't make very many decisions on anything of any major importance. We just left it with the word that we would check it with Mr. Newman.

Q. Did you afterwards check it with Mr. Newman, as to whether the company was willing to furnish rubber boots and raincoats for the janitors in Parts Plant No. 2?

A. We did, and he said: No.

Q. Do you know whether you reported it to Mr. Fisher, or did anybody that you know of report it to him?

A. I don't think they did. [760]

Mr. Riggs: That is all.

Cross Examination

Q. (By Mr. Harrington) What did Newman say to Fisher on that morning when he asked him

(Testimony of Henry Golem.)

for his rover's button? That was on January 1st.

A. He asked him what he was doing there and where was his rover's button.

Q. Did Fisher reply to that?

A. Yes, sir; he told he was talking to the janitor about raincoats, and he said he had a rover's button, and he got it out of his pocket.

Mr. Harrington: I have no further questions.

Redirect Examination

Q. (By Mr. Harrington) Did you have any conversations at any time with Mr. Fisher to the effect that these bulletins were posted about leaving the department didn't apply to him? A. No.

Q. Did you ever have any conversation with Mr. Fisher in which you told him he would get along faster if he left off any union activities?

A. No, sir.

Mr. Riggs: I think that is all, Mr. Golem.

Trial Examiner Hektoen: That is all. Thank you, Mr. Golem.

(Witness excused.) [761]

Mr. Riggs: Mr. Powell.

STEPHAN J. POWELL,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Testimony of Stephan J. Powell.)

Direct Examination

Q. (By Mr. Riggs) Your full name and address?

A. Stephan J. Powell, 1805 Frederick Street, Fort Worth, Texas.

Q. Are you employed by Consolidated?

A. I am.

Q. What is your present position?

A. Factory manager of the Fort Worth Division, Plant 3.

Q. What does that plant consist of?

A. It consists of—I don't quite understand; the whole plant, you mean?

Q. What amount of ground does it cover? How long is it?

A. Oh, it is 4000 feet long, and I think it is 350 feet wide.

Q. What was your position before you went to Fort Worth.

A. I was assistant factory manager under Mr. Newman's supervision.

Q. Of the Parts Plant, in San Diego?

A. Of the Parts Plant, Plant 2, San Diego, yes.

Q. When did you transfer to Fort Worth?

A. March 19, I left San Diego March 19th. [762]

Q. Was that since the time Mr. Newman left?

A. That is correct. Mr. Newman got there about two weeks before, and then he came back and Mr. Newman and I left together.

Q. Prior to your being assistant to the factory

(Testimony of Stephan J. Powell.)

manager of the Parts Plant, had you been employed at the Home Plant? A. Yes.

Q. When were you employed at the Home Plant?

A. I worked with the company since 1925, so I don't know. I couldn't answer that, just when; continuously.

Q. You are one of the men that came from Buffalo in 1935? A. Yes.

Q. The early part of 1941, what was your position with the company?

A. I became foreman in the wing department.

Q. Where was that located?

A. In Building No. 1, part in Building No. 4, and the PBY section or division was in Building No. 3.

Q. Were those all at Plant No. 1?

A. Those were all at Plant No. 1.

Q. Who is the manager of Plant No. 1?

A. Mr. Kelly.

Q. And you were the foreman of the wing department? A. Yes.

Q. Did Mr. Fisher work under you there?

[763]

A. He did.

Q. Did he work there from January to July of 1941? A. He did.

Q. Did you have any conversation with Mr. Fisher with reference to his union activities, in July of 1940? A. Yes, I believe I did.

Q. Do you remember what that was?

(Testimony of Stephan J. Powell.)

A. I do, in one instance, where I told him—pardon me; may I make a correction? He told me he was appointed a committeeman, that he would have to leave his department from time to time, and I told him he cannot do that as long as I am the foreman.

He said he got permission from the top man, that he was allowed to do that.

I said, "Well, I will find out, but until that time you are not allowed."

Q. Did you say, "You are not allowed to leave the department without my permission"?

A. Right.

Q. Was that permission required in writing, or was it oral?

A. No, it was not required in writing. He could call me or come to my desk and ask me if he could leave, and I would give him permission.

Q. You say he said he had permission from the top management, to leave, whenever he wanted?

[764]

A. Yes.

Q. Did he say who gave him the permission?

A. Yes.

Q. Who did he say gave him that permission?

A. He said Mr. Kelly gave him the permission.

Q. Did Mr. Fisher, during that period, from January of 1941, when he became a shop committeeman, up to the time he moved to the Parts Plant, come to you for permission to leave the department?

A. Yes, he did.

(Testimony of Stephan J. Powell.)

Q. Do you know whether or not there were occasions when he left the department without your permission?

A. Yes, he left several times, in fact, a number of times without my permission.

Q. Did you talk to him about those occasions?

A. I did.

Q. How many such conversations did you have?

A. They were numerous; I would say, I would have to guess at it. I am sorry.

Q. At that time was there any system of requiring a rover's badge to be obtained in order to leave the department? A. No.

Q. Was there any such rule in plant No. 1 at any time? A. Never, to my knowledge.

Q. When you went up to the Parts Plant, I think you said in [765] July, was it, 1941?

A. That is correct.

Q. Did Mr. Fisher also go up to the Parts Plant?

A. He came in about a month after I became assistant factory manager, roughly.

Q. Did Mr. Kelly have anything to do with the Parts Plant?

A. No, not whatsoever, at that time.

Q. Did you ever have a conversation with Mr. Fisher in which you told him if he would quit the union stuff you would see he was advanced to a better position? A. Never.

Q. What was the rule with reference to leaving his place of business for a union shop com-

(Testimony of Stephan J. Powell.)

mitteeman, to go anywhere in the same department?

A. They were allowed to do that. In fact, every man was allowed to go from one part of the department to another for any kind of business, getting some tools or anything at all.

Q. But in order to leave his department it was necessary to obtain permission from the foreman?

A. Correct.

Q. When you went up to the Parts Plant—this first bulletin of July, Respondent's Exhibit 2, which I think you heard about here on the stand—are you familiar with the one I am talking about?

A. I am. [766]

Q. After that was posted, did you have any conversation with Mr. Fisher in which you told him that didn't apply to him?

A. Never. Pardon me. Would you mind repeating the question?

Trial Examiner Hektoen: Read the question, Miss Reporter.

(Question read.)

The Witness: Yes, I had a conversation with him.

Q. (By Mr. Riggs): Did you ever have a conversation in which you told him that this bulletin—

A. I told him it does apply to him, as well as to any other member of that particular organization that is not specified on that memorandum.

Q. After you went up to the Parts Plant you

(Testimony of Stephan J. Powell.)

were no longer foreman in charge of Mr. Fisher, were you? A. No.

Q. Who was his foreman?

A. Mr. Mineah.

Q. And you had become Mr. Mineah's superior, to some extent, being assistant factory manager?

A. That is correct.

Q. Did you have any conversations with Mr. Fisher after he got up to the Parts Plant, about leaving his department to go to other departments?

A. Yes, I did. [767]

Q. Can you recall when the conversation was, or where?

A. Well, naturally it would have to be—it was before January 1, 1942, but I couldn't remember dates or the month.

Mr. Riggs: Read the question.

(Question read.)

Q. (By Mr. Riggs): After you got up to the Parts Plant, I am talking about.

A. It was in Building No. 3 where I had an office on the mezzanine floor, a temporary office, because the administration building wasn't finished yet.

Q. Can you remember the month?

A. It was shortly after Mr. Newman issued that order that each and every employee should have a rover's button in order to leave his department; sometime after.

Q. That bulletin was issued some time in August. Does that refresh your recollection?

(Testimony of Stephan J. Powell.)

A. That would be either September, around that time, August or September.

Q. Did you find, on your inspection of the plant, from time to time, Mr. Fisher in other departments?

A. Yes.

Q. When you saw him in other departments did he have a rover's button?

A. On several occasions he did not.

Q. Did you talk to him on the occasions when you found him [768] without a rover's button?

A. I did.

Q. Can you tell us how many of those occasions there were?

A. Well, I would have to guess. I just wouldn't remember the number; numerous, I would say; quite frequently; is that sufficient?

Q. Well, what do you mean by that? I don't mean to ask you the exact number of times, but would you say there were a couple of occasions a month?

A. Yes, I would say about twice a week.

Q. Twice a week? A. Yes.

Q. On those occasions that you found him without a rover's button, can you give us the substance of any conversation that you had with him as to what he said or what you said to him?

A. Well, he sort of—he would probably have legitimate business to be out, but it was the rule he broke in not asking for the button, or if he would ask for the button, he would get it from a

(Testimony of Stephan J. Powell.)

clerk, and he would tell him Mr. Mineah had told him to give him the button, on false pretense.

Mr. Ryan: I object to this; the witness couldn't possibly know what he said to the clerk. [769]

Trial Examiner Hektoen: Read the answer.

(Answer read.)

The Witness: He would receive the buttons on false pretense.

Trial Examiner Hektoen: Strike it out, Miss Reporter.

Q. (By Mr. Riggs): What was the substance of your conversation? You can't say what the conversations of other people have been, when you were not around. What did you say to Mr. Fisher and what did he say to you on any occasion you can think of, when you found him out of the department either with or without a rover's button?

A. Let me think. It's pretty hard to remember just what I said. I probably said: You are not on the job again.

Mr. Ryan: We don't care what he probably said. If *it something* he cannot remember, we object to it.

Trial Examiner Hektoen: Sustained.

Q. (By Mr. Riggs): Do you recall any conversation, Mr. Powell?

A. Let me think. I recall one instance.

Q. You will have to keep your voice up.

A. I say: I recall one instance, when I met him; it was ten minutes after the second whistle blew. I said: "What are you doing here?"

(Testimony of Stephan J. Powell.)

He said: "I was here during lunch time and I got tied up until now." [770]

I said, "Mr. Fisher, you will have to be on the job. You haven't got a button."

He says: "I haven't got a button, but I don't need a button during the lunch period; therefore, I haven't got a button; but I am going right now," so apparently he went.

Q. Do you recall when that was?

A. That was, I would say, November or December, somewhere around that time.

Q. Did he ever say to you in substance, in these conversations, Why, Mr. Powell, you gave me permission to leave my department at any time I wanted?

A. He did. I told him that was when I was the foreman, but it's different now.

Q. You mean that was when you were foreman down at Plant 1? A. Right.

Q. Did you say that now he was under another foreman? A. That is correct.

Q. Do you recall a meeting in the first two weeks of December, at which you were present, and Mr. Golem and other persons, at which the conversation came up as to whether Fisher had been given permission to be allowed to be called to the phone? A. I do.

Q. Can you state what the substance of that meeting was? [771] What was said by anybody?

A. He asked me if he was allowed to be called

(Testimony of Stephan J. Powell.)

to the telephone, and I thought that was okeh. I says, "If there is a call for you in that particular department the clerk will call you, and naturally you can answer."

Q. Was there anything said at that meeting about his being allowed to leave his department because he had already made arrangements with you about it?

A. I don't remember whether we discussed that or not.

Q. Had he made any arrangements with you about it, that he could leave his department?

A. Not in Plant 2.

Q. Do you recall being with Mr. Newman on January 1, 1942? A. I do.

Q. Where were you with him?

A. I was with him since 7:00 o'clock that particular morning.

Q. Where was that?

A. In the office; then we started a tour of inspection, starting at the south end of the plant.

Q. Who was with you?

A. Mr. Newman and Mr. Golem.

Q. What was your purpose in starting at the south end of the plant?

A. Well, we have done that periodically. [772]

Q. What did you go for?

A. To see just how—Mr. Newman would point out to us certain things he wanted done.

Q. Did you know that Mr. Fisher was out of his department on that day?

(Testimony of Stephan J. Powell.)

A. No, I didn't.

Q. Did you meet him anywhere, and if so, where?

A. Yes, we met him; Mr. Newman and Mr. Golem and I were walking now in Building No. 2, and we noticed Mr. Fisher and a dark colored man with him.

So, we approached him and he says, Mr. Newman says: "Where is your button?" The button wasn't outside. He says "Where is your button?"

Mr. Fisher pulled the button out of his pocket and he says: "Here it is."

He asked him: "What are you doing?"

He says, "I am going to Mr. Larimer's office, to try to find out about raincoats."

He says, "You know that is settled, about raincoats; go back to your job," and he did.

Q. Did Mr. Newman tear a button off of Mr. Fisher's shirt on that occasion?

A. He did not.

Q. After Mr. Fisher went back to his job, where did the three of you go? [773]

A. We started slowly from that particular building, and Mr. Newman says: "Say, I had better check; the chances are he got the button——"

Q. He decided to check? A. Yes.

Q. Where did you go?

A. We went right up to Mr. Mineah's desk.

Q. Was that in the same building?

A. No, another building.

(Testimony of Stephan J. Powell.)

Q. Was that an adjacent building?

A. That is in the next building.

Q. And Mr. Mineah's desk was on the second mezzanine?

A. The first mezzanine, about the middle of the building.

Q. Was Mr. Mineah there?

A. Not at that moment, but the clerk went out to look for him.

Q. When Mr. Mineah came, what was said with reference to his having given Mr. Fisher—

A. Mr. Newman—

Q. Wait a minute. —Mr. Fisher permission to leave?

A. Mr. Newman asked Mr. Mineah did he ask permission to leave his department, and Mr. Mineah said: No.

Q. Had Mr. Newman asked Mr. Fisher anything about that when he met him in the building, just before you went there?

A. I don't remember whether he asked him if he has—I [774] believe he did.

Q. You don't quite remember that?

A. I don't remember.

Q. Do you remember a meeting where Mr. Fisher brought up a grievance that Mr. Mineah had sworn at him?

A. Repeat that.

Trial Examiner Hektoen: Read the question, Miss Reporter.

(Question read.)

(Testimony of Stephan J. Powell.)

The Witness: Yes, I do.

Q. (By Mr. Riggs): What was the substance of what happened with reference to that complaint of Mr. Fisher's?

A. I remember that very well, where Mr. Felton asked me if there wasn't something that could be done to kind of help Mineah's tactics in his department, the way he approached Mr. Fisher, and I told him: "I will do it; I will straighten it out."

Q. That was with reference to swearing?

A. That is right.

Q. Did you try to straighten out anything about Mr. Mineah's orders that Fisher couldn't leave the department without his permission?

A. No. I never did give any foremen any such authority, that he could let any man rove around the plant without permission of the foreman. [775]

Q. After you went up to the Parts Plant and Fisher was there, did you have a conversation with him in which you told him to go ahead and do the same thing he had done in the past, follow the same procedure about leaving the department?

A. I don't remember. I don't believe I did.

Q. That was after he had moved up there under another foreman?

A. Well, repeat the question again.

Trial Examiner Hektoen: Read the question.

(Question read.)

The Witness: No, I still say I didn't.

(Testimony of Stephan J. Powell.)

Q. (By Mr. Riggs): I am sorry; I can't hear you.

A. I says, I did not give him any such permission or any authority.

Q. Did you have any such conversation?

A. I don't remember.

Q. To give him permission in the Parts Plant to go ahead and do the way he had done in Plant 1, when he was under you as foreman?

A. No, I did not.

Q. Did you give him such permission at any time after he got to the Parts Plant?

A. No, I did not.

Mr. Riggs: That is all. [776]

Cross Examination

By Mr. Harrington:

Q. Did Mr. Kelly ever have anything to do with the Parts Plant? A. No.

Q. Did the janitors work out in the rain in the Parts Plant? A. Not to my knowledge.

Q. What happened at that meeting where Fisher brought up the grievance about Mineah's swearing? What was said at that meeting by you?

A. Well, Mr. Fisher, his grievance came up, and he didn't want to speak about it himself, and naturally, Mr. Felton got up and he says, "Mr. Powell, could you do something to Mr. Mineah?" He says, "You know he swears at Fisher" and so forth.

(Testimony of Stephan J. Powell.)

And I said, "That will be straightened out."

That was the end of the grievance.

Q. What else occurred at that meeting?

A. Several small grievances, that I don't remember.

Q. Was the subject of Fisher's leaving the department brought up?

A. I don't think so.

Q. How long was Fisher under you while you were foreman?

A. About 11 months.

Q. And then in the Parts Plant you were assistant factory [777] manager all the time Fisher worked there?

A. Pardon me, no. Then I became assistant factory manager the day I got in the Parts Plant.

Q. Were you assistant factory manager all the time Fisher worked at the Parts Plant?

A. Yes; all the time Fisher worked at the Parts Plant I was assistant factory manager.

Mr. Harrington: I have no further questions.

Q. (By Trial Examiner Hektoen): Mr. Powell, you said something, I don't remember when it was, or in what connection, about Fisher having come to you and said that now he was a shop committeeman, or something of that kind, and he might have to go various places?

A. That was when I was foreman at the Home Plant.

Q. Then what happened after that?

A. Then he told me he got permission from

(Testimony of Stephan J. Powell.)

Mr. Kelly and I didn't quite believe that. I said, "Let's go to see Mr. Kelly."

So he challenged me, and walked right up to his office, and I figured: "If he has gone that far, he must be honest about it"; and I said: "Apparently you have the permission."

Q. After that there was no question about it?

A. After that there was no question about it, but he still had to let me know when leaving his department.

Q. Then he went over to the Parts Plant, and you said it [778] was changed since you were foreman?

A. That is correct. I couldn't go contrary to Mr. Newman's orders. He laid the law, and I had to abide by it.

Q. When did you tell Mr. Fisher the thing was changed?

A. I don't remember specifically; the notice was in the sheets. He read it and naturally I thought he knew without me telling.

Q. You didn't specifically tell him anything?

A. I don't remember I did.

Trial Examiner Hektoen: That is all I have.

Redirect Examination

By Mr. Riggs:

Q. When Mr. Fisher told you he had permission from Mr. Kelly to go around, did he say it was within the department, or outside the department?

A. Well, he gave me to understand he had per-

(Testimony of Stephan J. Powell.)

mission from Mr. Kelly to go all over the shop.

Q. And did you believe him?

A. I did not.

Q. You said you started to Mr. Kelly's office, to check up on it?

A. He made me believe, then, that he was right.
Mr. Riggs: That is all I have.

Recross Examination

By Mr. Harrington:

Q. Was Mr. Kelly over Mr. Newman and Mr. Powell?

A. In Plant 1, yes. Mr. Newman was assistant factory [779] manager and assistant chief test pilot at that time, in Plant 1.

Q. Did Mr. Kelly have authority over Mr. Newman in Plant No. 2?

A. Theoretically he had, yes; not in Plant 1.

Trial Examiner Hektoen: Read the question, Miss Reporter.

(The question was read.)

The Witness: No.

Mr. Harrington: Nothing further.

Trial Examiner Hektoen: That is all, Mr. Powell. Thank you.

(Witness excused.)

Mr. Riggs: Mr. Vance.

THOMAS F. VANCE,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination

By Mr. Riggs:

Q. Your full name and address?

A. Thomas F. Vance, Carlsbad, California.

Q. Are you employed by Consolidated, and, if so, in what capacity?

A. I am employed in the capacity of supervisor in the labor relations division.

Q. How long have you been connected with the company? [780]

A. I was employed January 12, 1942.

Q. Prior to that time what had been your position?

A. Prior to coming with Consolidated?

Q. That is what I asked you.

A. I had been engaged as manufacturer's agent, manufacturing and selling various articles.

Q. Since you came to Consolidated has there been a reorganization of the industrial relations department? A. There has.

Q. Tell me what was the situation when you first got there?

A. There were a number of departments, such as the education department, personnel department, labor relations department, but they were not inter-

(Testimony of Thomas F. Vance.)

related and coordinated.

Q. Who was the head of the labor relations department at that time? A. Mr. Wiseman.

Q. Is he with the company now?

A. He is not.

Q. When did he sever his relations with the company? A. May 29, 1942.

Q. Who was the director of the industrial relations? A. At that time?

Trial Examiner Hektoen: What is the difference between labor relations and industrial relations?

Mr. Riggs: That is what I want to bring out by this [781] chart which I will show you in just a moment.

The Witness: Mr. Persons became director of industrial relations on the 9th of April, 1942.

Q. (By Mr. Riggs): Had he been with the company before? A. No.

Q. Who is the head of the labor relations division or department at the present time?

A. Walter Bower.

Q. When did he become connected with the company?

A. On the 10th of June, 1942.

Q. I show you a chart made up showing relations of the industrial relations department to its various divisions, and ask you if that has been prepared under your supervision?

A. It was prepared in our department.

(Testimony of Thomas F. Vance.)

Q. You assume the responsibility for its accuracy? A. I do.

Mr. Riggs: I would like to offer this in evidence. I don't know whether it has any particular relevancy, but I think it shows the size and magnitude of the company's relations at the present time.

Trial Examiner Hektoen: All right, Mr. Harrington.

Mr. Harrington: Yes.

Trial Examiner Hektoen: Admitted as Respondent's Exhibit 13 in evidence.

(The document referred to was marked as Respondent's Exhibit 13 and received in evidence.) [782]

Q. (By Mr. Riggs): Can you tell us, Mr. Vance, how many grievances have been presented to the company by the union since March 5th until the close of business on September 5th?

A. It's in excess of 650, 397 cases, but we also had informal grievances.

Q. What is the difference between the formal and informal grievances?

A. The difference is that simply of terminology. The formal grievances are those provided by the union agreement. The informal is where some matter concerning the union agreement arises, and a business representative writes us a letter, or telephones us, and we look into the matter, and the handling is practically the same.

(Testimony of Thomas F. Vance.)

Q. Well, now, can you state when you began to keep a record of grievances?

A. On the 5th of March, 1942.

Q. That was the date of the new grievance procedure in the union agreement was adopted, was it not?

A. That is correct.

Q. How many formal grievances have you had since that adoption?

A. Right around 400.

Q. How many of those are from plant 1, and how many from plant 2 [783]

A. 270 in Plant 1, and 127 in Plant 2.

Q. What happened during August as to the number of new grievances over the old ones?

A. There were 74 new grievances, 47 in Plant 1, and 27 in Plant 2.

Q. Was that about an average month's number?

A. That is average.

Q. That is, about 74 a month?

A. That's just about an average month.

Q. You are referring to the formal written grievances?

A. Yes.

Q. But not to the informal grievances that were brought up in meetings or over the telephone?

A. No.

Q. How many of these grievances were pending on September 5th?

A. 23 in both plants, 15 in Plant 1 and 8 in Plant 2.

Q. Had all the rest of them been settled?

A. That is correct.

Q. And by "settled" I mean the grievances had

(Testimony of Thomas F. Vance.)

either been withdrawn, some with the company's assistance and some with the union's assistance, and some were compromised, which were satisfactory to both parties? A. That is correct.

Q. So that none, at the present time, haven't been settled, [784] except the current ones you spoke of, which are in progress? A. That is correct.

Mr. Riggs: May we go off the record, please?

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Q. (By Mr. Riggs) Have you sat on the wage review board from time to time? A. I have.

Q. Have you represented the company on those occasions? A. I did.

Q. How many of the wage review boards have you sat on?

A. I sat on the lower wage review board at Plant 2 for approximately four weeks, and the appeal board, which is the board to which the cases not decided in all the lower boards, the cases are appealed to, for about three weeks, at Plant No. 1.

Q. During the time when you sat as one of the company's representatives, with some of the representatives of the union, were there occasions when the union demanded greater increases for union men than they demanded for non-union men?

A. There were such times.

Q. Were they numerous or seldom?

Mr. Ryan: Mr. Examiner, I object to that as immaterial. [785]

(Testimony of Thomas F. Vance.)

Mr. Riggs: I am not going to pursue it any further. I am not going to bring out any individual cases, not to prolong the hearing.

Trial Examiner Hektoen: He may answer. What were they? Numerous or scattered?

The Witness: Scattered instances.

Q. (By Mr. Riggs) That is, for the same kind of men doing the same kind of work?

A. Right.

Mr. Harrington: I will object to that as calling for a conclusion of the witness.

Trial Examiner Hektoen: Sustained.

Mr. Riggs: I will withdraw the question.

Q. (By Mr. Riggs) I also show you some statistics that purport to have been made up in the industrial relations department with reference to average hours and earnings. Can you state that those statistics were made up in that department from the records of the department?

A. Yes, they were made up in the industrial relations department.

Q. And were they made up by clerks and employees under your supervision, in that department?

A. That is correct.

Q. Can you vouch for their accuracy?

A. I can so vouch. [786]

Mr. Riggs: I will offer these in evidence, this table which shows the average hours and earnings, showing the average weekly earnings and the aver-

(Testimony of Thomas F. Vance.)

age hours per week and the average hourly earnings from 1935 to and through August, 1942.

Trial Examiner Hektoen: Well, it is interesting, but what does it prove?

Mr. Riggs: The constant increase in weekly earnings and the average hours, since that time.

Trial Examiner Hektoen: Do you want it in?

Mr. Riggs: I would like to have it.

Trial Examiner Hektoen: All right. Show it to Mr. Harrington.

Mr. Ryan: We object to it as immaterial.

Trial Examiner Hektoen: They may be admitted as Respondent's Exhibit 14.

(The document referred to was marked as Respondent's Exhibit No. 14, and received in evidence.)

Mr. Riggs: That is all I have from Mr. Vance, Mr. Examiner.

Cross Examination

Q. (By Mr. Harrington) For the period March 5 to September 5, since these grievances were presented, has any grievance been handled within the time set out in the contract?

A. They have all been handled, to the best of my knowledge, [787] within the time limits set out in the union agreement, unless by mutual agreement with the union more time was taken.

Trial Examiner Hektoen: You have reference to this 24 hour provision, Mr. Harrington?

Mr. Harrington: Yes, in Section 9. I have no further questions.

(Testimony of Thomas F. Vance.)

Trial Examiner Hektoen: Thank you, Mr. Vance.

(Witness excused.)

Mr. Riggs: Mr. Shanahan.

WILLIAM A. SHANAHAN,

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, testified further as follows:

Trial Examiner Hektoen: You testified here before, Mr. Shanahan?

The Witness: I have, sir.

Redirect Examination

Q. (By Mr. Riggs) At the last hearing, Mr. Shanahan, on Saturday, Mr. Shannon presented six or seven names of persons that he said were union men, and union men who had obtained at the wage review board, no greater increases hourly than that originally proposed by the foreman. I have given you the names of those men. Will you kindly tell the Examiner what the facts with reference to these increases pro- [788] posed for these men are?

A. The facts are that when the increase of 6 cents was proposed by the foreman, Mr. Shannon immediately asked for an increase of 15 to 20 cents. We raised the point that it was impossible for us to continue to negotiate on the wage board with Mr. Shannon because of his excessive demands, and a recess was called, and the other two members of the union

(Testimony of William A. Shanahan.)

on the board held a conference with Mr. Shannon and attempted to have him rationalize his demands.

As a result of the protest of the foreman, also the inducements of the other members of the wage board representing the union, Mr. Shannon did accept five or six recommendations of the foremen.

Q. And that was how it happened they got no greater increase than the foreman had suggested?

A. That is correct.

Q. That was the result of negotiations which were conducted in the wage review board, by the other members of the union, after you said you didn't think it was possible to negotiate further with Mr. Shannon?

A. That is correct.

Q. Did he participate in the additional negotiations also?

A. That is correct.

Q. Did he agree to the increases proposed by the foreman after the meeting had reconvened? [789]

A. He did.

Mr. Riggs: That is all.

Recross Examination

Q. (By Mr. Harrington) Mr. Shanahan, these

Mr. Riggs: I beg your pardon, Mr. Harrington. May I ask one other question?

Mr. Harrington: Yes.

Redirect Examination

Q. (By Mr. Riggs) How many men were there that came up for the wage review board from April to, say, July, that Mr. Shannon had to consult with reference to wage increases?

(Testimony of William A. Shanahan.)

Mr. Ryan: May I have the question read?

Mr. Riggs: I will withdraw the question.

Q. (By Mr. Riggs) How many men came up before the wage review board in your department with which Mr. Shannon was concerned, between the time the board was inaugurated in April, up to, say, the present time?

A. From April through August there were approximately 120 persons reviewed.

Mr. Riggs: That is all.

Mr. Ryan: I move to strike the testimony as immaterial and irrelevant and having no bearing on the issues in this case.

Trial Examiner Hektoen: It is in, and it may stand, though I must confess I am still puzzled as to what it proves. [790]

Mr. Harrington: No questions.

Trial Examiner Hektoen: Thank you, Mr. Shanahan.

We will be in adjournment until 1:30.

(Whereupon, at 12:40 o'clock P. M., an adjournment was taken until 1:30 o'clock P.M. of the same date.) [791]

After Recess

(The hearing was reconvened at 1:30 o'clock P.M.)

Trial Examiner Hektoen: We will be in order, please.

Mr. Riggs: Mr. Kelly.

JAMES L. KELLY,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Riggs) Give your full name and address, please.

A. James L. Kelly, 3641 Hyacinth Drive.

Q. San Diego? A. San Diego.

Q. Are you connected with Consolidated?

A. Yes, sir.

Q. How long have you been connected with Consolidated? A. 15 years.

Q. Did you come out with the company from Buffalo to San Diego in 1935? A. I did.

Q. What is your position at the present time?

A. I am assistant vice-president of production.

Q. Where is your office? A. Building 14.

Q. Plant No. 1? [792] A. Plant No. 1.

Q. How long have you been vice president in charge of production?

A. Since January of this year.

Q. And prior to that time what was your position? A. Factory manager of Plant 1.

Q. Do you know Arthur J. Fisher?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I would say about three years.

Q. Do you recall when he was working in Plant 1 under, I think, Mr. Steve Powell, as foreman?

(Testimony of James L. Kelly.)

A. Yes, I do.

Q. Did you ever have any conversation with Mr. Fisher while he was in Plant 1, between January of 1942, and June or July, 1942?

A. Not to my knowledge. I may have talked to him some place around the plant, but there was no meeting that I know of.

Q. I would like to correct that; 1941 should be the year, instead of 1942.

A. Well, the only time I talked to him would be during the monthly meetings of the union, that they had at the factory.

Q. At Plant 1? A. At Plant 1, yes. [793]

Q. At any time during that period from January to July, 1941, did you have any conversations with Mr. Fisher in which you told him he couldn't leave his department at any time he desired, without procuring his foreman's permission?

A. If I did have a conversation with him it was to the effect that he would have to have permission from the foreman or assistant foreman of the department, and that was understood by all employees in every department.

Q. Was that the practice of the company at that time? A. That was the practice.

Q. At that time did you have in force any practice of obtaining rover's buttons when a man left his department?

A. We never had the rover's buttons in Plant 1.

Q. You haven't got them today?

A. Haven't got them today.

(Testimony of James L. Kelly.)

Q. When Mr. Fisher left the plant 1 to go to plant No. 2, did you have any jurisdiction over him?

A. I had no jurisdiction over anything that was done at Plant 2.

Q. Did you have any conversation with him after he got to plant 2 about anything in connection with the company, or the union?

A. Not to my knowledge.

Mr. Riggs: That is all. [794]

Cross Examination

Q. (By Mr. Harrington) While you had supervision of Plant 1, did you ever have any occasion to hear of Fisher leaving his department?

A. Yes, I think I did.

Q. When?

A. I think it was in one of the other departments first, that he worked in.

Q. What was that about?

A. I don't know what it was about, but I think it was reported to me. That's when he worked in the sheet metal, I think.

Q. What was reported to you?

A. That he had left the department without permission.

Q. Did you do anything about this?

A. It was brought up in one of our meetings that they were not supposed to leave, and it was thoroughly understood by all union representatives that were at the meeting, that they had to obtain permission from the foreman or his assistants to leave the department.

(Testimony of James L. Kelly.)

Q. Was that the only time you heard of Fisher leaving his department?

A. No, they complained about him when he was working in the wing department.

Q. Was that before or after this? [795]

A. That was after that. He was rehired, as I recall, in the wing department after he worked in the sheet metal department.

Q. Did you personally ever give any specific instructions with respect to Fisher?

A. No, not him alone; to all of our employees.

Mr. Ryan: That is all.

Mr. Riggs: That is all, Mr. Kelly. Off the record.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Redirect Examination

Q. (By Mr. Riggs) Do you recall, Mr. Kelly, when Mr. Fisher was first discharged, and then rehired? A. I recall the rehiring.

Q. Did you have any conference with Mr. Waskey or any people representing the union, with reference to his being rehired?

A. I had several people from the union that pleaded to have him rehired.

Q. Did you agree to have him rehired?

A. And after consideration I think of a month, I said I would rehire him on one condition, that he be put in the department where Mr. Waskey was.

Q. Did you have any talk with Mr. Waskey as to

(Testimony of James L. Kelly.)

who was [796] going to be responsible for him in the future?

A. I told Mr. Waskey he would have to be responsible for him; that is why I put him in his department.

Q. What did Mr. Waskey say?

A. He said he would try to take care of him.

Q. What did he mean by trying to take care of him?

Mr. Ryan: I object to that.

Mr. Riggs: I will withdraw it.

Q. (By Mr. Riggs) Did he say he would be responsible for his conduct in the future?

A. That's what he said, he would be responsible for his conduct.

Mr. Harrington: No questions.

Trial Examiner Hektoen: Thank you, Mr. Kelly.
(Witness excused.)

Mr. Riggs: I am practically ready to close our case, with the exception of one document I am waiting for which may or may not be admitted. I will say, frankly, it is about Mr. Newman's clerk, and Mr. Schmidt, who was present at this interview which was held in Mr. Newman's office on January 1. Both of them at the present time are employees of the company in Ft. Worth, and I have not been able to get them over here to testify. I expected an affidavit from the stenographer, Miss Resch, and I have already asked Mr. Harrington and Mr. Ryan whether they would be willing [797] to accept the affidavit in lieu of her testimony, and they were to give me an

(Testimony of James L. Kelly.)

answer after the recess today Of course, if they refuse to accept it, I can't do anything except close the case.

Trial Examiner Hektoen: Off the record.

(Discussion off the record.)

Trial Examiner Hektoen: On the record.

Mr. Ruggs: Mr. Harrington states he refuses to accept the affidavit in lieu of Miss Resch's testimony, and I don't really think it of sufficient importance to ask to have this trial continued to receive it. Therefore, I am ready to close the case.

Trial Examiner Hektoen: Very good.

Mr. Riggs: I will renew my motion to dismiss the matter, made at the end of the case made out by the Board.

Trial Examiner Hektoen: Those motions are taken under advisement and will be ruled upon in my intermediate report.

As I said when the hearing opened, I would be very glad to have some oral, not so much argument, as statements of what the various parties rely on in this case.

There are some rather subtle points, it seems to me, and I would be very glad to be certain I understand the positions of both the Board and the Respondent.

To that end, I spoke to both counsel a couple of days ago and said I would like to have something from them, and [798] this would seem about the time to do that.

(Testimony of James L. Kelly.)

Mr. Harrington: Mr. Examiner, I have one or two witnesses I was going to call on, on the question of checkoff in the plant, and activities of union committeemen, in rebuttal.

Trial Examiner Hektoen: I see. All right. I did not realize you had any rebuttal testimony.

REBUTTAL

Mr. Harrington: Mr. Perry.

L. A. PERRY,

recalled as a witness for the Board, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner Hektoen: You are the same Mr. Perry who testified the other day?

The Witness: That is correct.

Direct Examination (Continued)

Q. (By Mr. Harrington) Before you were business agent of the union, you were a union committeeman in the plant?

A. Yes, I was union committeeman up until January 1 of 1941.

Q. For how long a period of time?

A. That was for approximately one year.

Q. And during that time what was the practice with committeemen leaving the department to engage in union business? [799]

(Testimony of L. A. Perry.)

A. I was not aware of any standard practice.

Q. What was the custom?

Mr. Riggs: I will object to this as being too remote, from the time under discussion; his union commitment ended January 1, 1941, he said.

Trial Examiner Hektoen: Is that correct?

The Witness: That is correct, sir.

Trial Examiner Hektoen: It would seem a little remote.

Q. (By Mr. Harrington) Are you familiar with the checkoff in the company's plant, and how it is worked? The checkoff on union dues?

A. You mean as to the dues deducted?

Q. Yes.

A. The fundamental procedure I am familiar with, yes. The exact details in the accounting office, I am not exactly familiar with those.

Mr. Harrington: I have no further questions.

Trial Examiner Hektoen: Thank you, Mr. Perry.

Mr. Riggs: No questions.

(Witness excused.)

Mr. Harrington: I have one further witness and I understand he is on his way here, Mr. Examiner.

Trial Examiner Hektoen: Shall we wait?

Mr. Harrington: Yes, please.

Trial Examiner Hektoen: We will be in recess until he [800] gets here.

(A recess was taken.)

Trial Examiner Hektoen: We will be in order.

[801]

Trial Examiner Hektoen: Anything else? If not, the Board rests again and the Respondent rests. Then I will repeat the remarks I started to make before the rebuttal.

We are ready to find out what this is all about. I suppose you had better start off, Mr. Harrington. [813]

Mr. Harrington: As to Section 8(1), I believe we have shown a continuous course of interference, restraint, and coercion, from August or September of 1941.

Blake, who was chairman of the shop committeemen in Plant No. 1, as such, had approximately 50 committeemen under him, and was required to handle all grievances that arose throughout the entire plant. He was removed from his position as head timekeeper for the Army hull to Vernon's office in August or September of 1941, and was put on miscellaneous timekeeping jobs.

This was admittedly because of his union activities. At that time Vernon told him that his union activities were occupying too much of his time.

Shortly thereafter, Blake was prevented from using the telephone by Vernon. He asked that the matter be taken up by union committeemen, and he straightened out with Kelly, but Vernon refused to do so.

Blake took the matter up, then, with the business representatives of the union, but he heard no more of the matter, and felt that the stamp of approval was thus put on his actions.

The company then moved him to a vault, where

there was no telephone available for his use. Then he was given a leave of absence, after that, and when he returned, although he had a year and a half's experience as a timekeeper, and [814] had been promoted to chief timekeeper in the Army hull, he was put to work sorting time cards, work upon which timekeepers are trained.

Dart, who was in charge of Plant No. 2, was instructed by Vernon to prevent Blake from using the telephone. Thus, we see in the case of Blake a continuous course of illegal, anti-union conduct by the company.

Then, we have the case of Barnes, who was a union committeeman in the accounting department, and who worked under Vernon. He participated in the wage review of April, 1942. Shortly after he became a union committeeman, he had requested a transfer, a year and a half before that time. It was refused, because it wasn't put in writing.

Shortly after being made a committeeman, Barnes was given a transfer that he had not requested and did not want, and he told the company, in the person of Vernon, that he did not want the transfer.

The company thus got rid of another union committeeman.

Condon, who was a union committeeman in the timekeeping department in April of 1942, attempted to take up a grievance with Shanahan, relating to the transfer of an employee, and was told by Shanahan that if the grievance was presented, the employee would be terminated. Further, Shanahan

told him that anyone who tried to do anything about the case, which was the Hardman case, was liable to get in trouble. [815]

This is not too subtle a method of coercing a union committeeman from performing his duty.

Then, we have the case of Shannon, who was a timekeeper in the timekeeping department. Just before the wage review in April, Shanahan asked him what he wanted to be in it for, anyway, and said that he was sacrificing his chances for advancement. He also asked him what it was going to get him.

In May, he suggested that Shannon sign the raises selected by him alone, without taking them up in the wage review, which was the proper method of handling the matter.

In June, Shanahan told Shannon to stay out of the tabulating and auditing departments. It was necessary for Shannon to go into those departments in order to learn the comparative jobs and the skills of men involved in the wage review. And he had been allowed to do that by the head timekeeper, Ellis, and the foreman in that department, Mr. Andres.

At this time Shanahan also told Shannon that he could make trouble for him and could probably get him removed as a union committeeman.

Also, in June, Shanahan asked Shannon to sign interim wage increase slips for two non-union men. Shannon refused to do so, because he felt that union men doing like work, and of like ability, should be given the same treatment. At that time Shanahan again asked him to drop the whole thing. He also

told Shannon to sign the raises, and that he could give [816] raises to anyone he wanted to, and that no one was going to stop him.

In May of 1942, production manager Perelle, sent a memorandum to Renison, on the subject of union dues.

Trial Examiner Hektoen: To whom?

Mr. Harrington: Renison, Board's Exhibit 10, stating that he should discuss with certain people their wishes concerning their remaining part of the union setup. In this connection, it should be noted that an employee's union affiliation or lack of union affiliation is no business of the company.

On the 8(3) we have two cases: Fisher's and Williamson's. Fisher was an employee for two years, from December, 1939 to January, 1942. He was a very active member of the union, from the very beginning of his employment with the company.

Early in 1940 Foreman Liegal told him that if it weren't for his union activities, Liegal would be able to do something for him in procuring a job he had requested. In January of 1941, Foreman Powell told Fisher that if he dropped the union stuff, he would be advanced to a better position. Fisher, however, continued his union activities.

In July of 1940 at a union meeting, Fisher successfully opposed a request by Major Fleet, that men work 40 hours a week before receiving time and a half, instead of receiving [817] overtime after 8 hours a day. Immediately thereafter he was dis-

charged, allegedly because of a mistake he had made three months previously.

The union succeeded in having Fisher rehired at that time. Fisher was union committeeman of the wing department in 1941, and was also plant chairman of the parts department when it opened in the spring of 1941. He was a very active committeeman and had a large number of employees to take care of. And as shop chairman, all the other committeemen brought their grievances up to him.

When Fisher first became committeeman, he made arrangements with Foreman Powell, on the procedure to follow when it would be necessary for him to leave his department. That arrangement was never countermanded. Fisher religiously followed those instructions without any difficulty whatsoever until December of 1941.

In December 13, 1941, this petition about men working the following Sunday was brought to Fisher by employees who sought his advice on it. Fisher acted, with respect to that petition, in accordance with his duties as a union committeeman. He was then accused, by plant manager Newman, of being a Jap lover, a Hitlerite, and a Communist, by plant manager Newman. Newman also told him, very pointedly and prophetically, as it turned out, that he was all done after the first of the year.[818]

On January 1st a grievance was brought to Fisher about janitors working in the rain without raincoats. Fisher told his supervisor, Gahlbeck, he might have to leave his department that day. He

received Gahlbeck's permission to do so. And in accordance with long established procedure, later he secured a rover's button from a clerk, in the foreman's absence. He met Newman, who told him to go back to work. A few minutes later Newman fired him, thus fulfilling his threat of December 13th.

Regardless of any so-called rule about men leaving the department, it is obvious Fisher followed the procedure set up with Powell. And that had never been challenged until December of 1941, and at that time he filed a grievance on it, and he was told to continue to follow that procedure.

Fisher was not the only committeeman who followed that procedure. Committeeman Harkins left his department dozens of times during that same period without seeing his foreman. Committeeman Thomas was told by his foreman he could leave his department at any time he wanted to, and he was to get a rover's button from the clerk.

Although the respondent has put on a host of witnesses to testify to Fisher's inefficiency, and his unsatisfactory attitude, it is highly significant that he was employed for over two years, and that he had received wage increases in that length of time, and that Mineah stated, on his discharge [819] slip, that he was "O. K." to rehire.

The next 8(3) is the case of Oliver H. Williamson. On April 14, Williamson was told by a fellow employee that the fellow employee had quit. After lunch that day, Williamson saw the fellow employee being removed from the plant in a manner in which

an employee who was discharged was removed. Williamson, in accordance with his duties as a union committeeman, went up to see what this matter was about. He started to discuss the matter with Foreman Liegel, when Foreman Liegel refused to discuss the matter and very pronouncedly accused him of being a labor agitator.

Williamson then wished to take up with the next highest individual, Hangen, this matter, and he and Liegel started to the plant, to see Hangen. When they saw Hangen, Liegel told Williamson how dumb he was, and this conversation with respect to Germans in the department, occurred. Williamson was then fired.

It is perfectly obvious that the incident arose in connection with Williamson's duties as a union committeeman, and that he was acting in his capacity as union committeeman at the time he was discharged. His subsequent reinstatement clearly shows that, because there was two weeks' pay which he did not receive; also, he was treated the same as a new employee.

On 8(1), that aspect of the case, we also have a continu- [820] ing course of refusal to bargain. The first was on December 13, this petition for the men to work on Sunday. The company not only arranged for the men to work on Sunday without consulting the union, but they did so in violation of the contract with the union, and over the union's objections.

Then, when the union took the matter up, the company settled it. The next incident is on in-

terim wage increases. Here, also, the company violated the contract and went ahead and handled the increases in its own fashion. When the union protested to the company they again settled the matter.

On the out-of-state hires, the company reduced the wages of these men and changed their wages without consulting the union. When the union protested this matter, the company settled it.

On the third shift proposition, the company went ahead and put the third shift into operation without consulting the union, and in violation of the provision in the contract. Although the union protested it, this matter has not been settled.

As to the overhead crane operators, the company went ahead and paid them in accordance with its own idea of what they should be paid. They didn't consult the union before doing so, and the matter was adjusted only after the union protested it.

Fisher's and Mergan's discharge were never taken up. [821] The union attempted to take them up and were told very definitely by Newman, who had been given authority to give such an answer, that the cases were closed, and that nothing further would be done on the matter.

Mr. Riggs: You mean Wiseman?

Mr. Harrington: Newman and Wiseman; I beg your pardon; Wiseman.

On the job classifications and wage rates the company has unilaterally set up these classifications and wage rates, has put them into effect without consulting the union, has kept them in effect, and

has refused to bargain with the union with respect to them.

This whole picture of 8(5) presents a pattern of refusal to bargain with the union. The company would go ahead, unilaterally, to do what it pleased; then, when the union caught up with it, make adjustments, and then shortly thereafter, they would go ahead and do what they pleased again and again.

That, I submit, Mr. Examiner, is not collective bargaining within the spirit or intent of the Act.

I have no further remarks.

Trial Examiner Hektoen: Let me ask you a couple of questions, Mr. Harrington.

With reference to Williamson, the union wrote the Regional Director a letter saying that everything was fine. [822] Right?

Mr. Harrington: Yes.

Trial Examiner Hektoen: And also, gave the same intimation as to the company. I don't know whether it was in writing or not. Is that right?

Mr. Harrington: I don't know about the company. I assume that is right.

Trial Examiner Hektoen: In any event, it seems to be at that point the Williamson case was settled. You say it was not settled, because he did not get his pay. Wasn't that also settled at that same time?

Mr. Harrington: No. It was not settled at that time, and my answer to that, Mr. Examiner, is that the Board is not bound by any private agreement between parties. When the Board feels there has been a violation of the Act, the Board proceeds, in

accordance with its duty, to investigate and to remedy that violation.

Trial Examiner Hektoen: That is true enough, but what about the Williamson matter, outside of that? Wasn't that whole question settled at the time he went back to work?

Mr. Harrington: No. My understanding of it is that he was reinstated on a different shift, under a different foreman, but he was not given his back pay.

Trial Examiner Hektoen: Under Mr. Tice, whom he likes very much. He wasn't given his back pay, but wasn't that [823] waived? Wasn't that part of the settlement, that he wouldn't get back pay?

Mr. Harrington: I don't believe there is anything in the record as to any waiving of that or any discussion of that. I am not aware of any arrangement of that sort that was made.

Trial Examiner Hektoen: Customarily, when those things are settled, what isn't taken care of specifically, is considered to be waived, isn't it?

Mr. Harrington: Not necessarily.

Trial Examiner Hektoen: Then, with reference to the third shift, is it the Board's position that the union asked the company to discuss an interpretation of the agreement with it, with reference to that Sunday morning double time business and that the company refused to do so?

Mr. Harrington: The Board's position is, further, that the company put that third shift into

effect, that is, as to the hours provision of it, without consulting the union.

Trial Examiner Hektoen: Right. Is what I have said part of the Board's position?

Mr. Harrington: Yes, that they refused to discuss it thereafter.

Trial Examiner Hektoen: Refused to discuss an interpretation of the contract?

Mr. Harrington: Yes. [824]

Trial Examiner Hektoen: The union had one interpretation and the company had another, and stuck to it, and did not discuss it with the union. Is that correct?

Mr. Harrington: That is right.

Trial Examiner Hektoen: All right, Mr. Riggs.

Mr. Riggs: Mr. Examiner, I think you can gather from the background of this case three things: First of all, the extreme magnitude and size of the company, and its extremely rapid growth, which may to some extent show the difficulties that the company has had in keeping up with the union, and some of its requests and demands.

Secondly, the change of management in the company which has ensued since January 1, 1942 in practically all of its top management.

Third, the extremely friendly personal relations between the members of the union and the members of the company, management, with reference to matters that have been testified to here. There have been no disagreements. There have been no

recriminations. There have been no accusations on either side.

Also, I think you can gather that from the time this agreement was first adopted, the company has studiously attempted to keep up and abide by its terms.

Now, this is not a case in which the question of collective bargaining, or the selection of an agent for collective [825] bargaining comes up. It is a case where this Board itself has selected the unit for collective bargaining, and the company and the union have entered into an agreement with reference to collective bargaining, and the way the agreement should be carried out.

That agreement, from the first, has contained provisions for arbitration of differences. Those arbitration provisions have been enlarged, with reference to grievances, by the adoption of the amendment of March 5, 1942. There have been arbitrations under the arbitration clause which have been requested by the union and which have been met by the company. None of the matters as to which complaint is now made by the Board, have been made the subject of a request for arbitration by the union.

Now, it may be, and I am not prepared to go into the law of this matter; I am quite sure that can be taken care of in some other way; it may be that the fact that the company and the union have entered into an agreement which provides for the settlement of their differences, if any, by being submitted to arbitration, does not provide an exclusive

remedy for the union. It may be, I am not prepared to concede that point, that the Board also may have jurisdiction in that the union, if it chooses not to arbitrate, under the union agreement, it may apply to the Board.

But, it seems to me a fact that the machinery is open [826] for the union to obtain speedy and direct settlement of any matters by arbitration, and its refusal to do so, and its application to the Board about trivial matters shows not a real desire to settle these matters by arbitration, but a desire to obtain from the Board, if necessary, some decision which may affect the company and its labor relations.

Now, taking up the case, first of all, of Mr. Williamson and Mr. Fisher, I think this testimony showed exactly the truth, between Mr. Williamson and the company, and the company's witnesses. There isn't any question but what Mr. Brown refused to work under a man who spoke with a German accent. There isn't any question that Mr. Williamson appeared and remonstrated. He said he was displeased. I think he was extremely angry. I think he is the kind of man you can see for yourself, upon the witness stand, who can lose his temper easily. There wasn't any question, and no denial of the fact that he was making a speech to the assembled employees. I think he said there were five or six, and our people said there were more than 10 or 12. I don't think it makes much difference.

But, at any rate, it was a disturbance which took

place at the plant and which Mr. Liegal, in his capacity as foreman, tried to stop.

Now, Mr. Williamson also said, as we recollect, that he took off his button and said he wasn't speaking as a [827] union man, but as an individual; that he wanted to talk with Mr. Liegal about the F. B. I., and complained about people in the plant, that the Axis was running the plant, and he didn't like Germans, and so forth. Under the circumstances, it isn't at all unlikely that Mr. Liegal got a little hot under the collar, and everybody was angry, and annoyed, and Mr. Williamson was discharged.

When it was brought to the attention of the company, by the union, they asked whether Mr. Williamson was a good workman, and it turned out he was. They negotiated, and sat down, and it was arranged that he be reinstated.

Mr. Roy Brown wrote this letter to the National Labor Relations Board, in which he says:

"This letter will serve as your official notice that in the matter of the charges now pending against the Consolidated Aircraft Corporation, which charges were filed by myself in behalf of Aeronautical Mechanics Lodge No. 1125, and relating specifically to Mr. Oliver H. Williamson have been settled to the satisfaction of our organization. Therefore, we wish to withdraw the particular charges against the Consolidated Aircraft Corporation."

That letter of April 30, 1942, says not a word about reservation of any claim for back pay. It was conceded, Mr. Williamson was reinstated with-

out any loss of seniority, [828] or other rights, and he went to work under a different foreman, as to whom he had no objection, as he testified.

This is the worst tempest in a teapot which I have seen lugged into a lawsuit to make a charge of unfair labor practices against a company. It doesn't seem to me that there can be a charge raised against a company for refusing to sit down and bargain, as to whether a man should be reinstated, after he has been fired. As I read the Act, it attempts to govern relations so long as they exist, between the employer and the employee. If a man has been fired and is no longer an employee, it doesn't seem to me it covers any claim that there must be collective bargaining. How could it be collective bargaining under those circumstances? The company says he was fired; the union says he ought to be back. You could have 5, 10, 15 or 20 conferences, and if neither party recedes from their position, there could be no determination of such an issue. It is not a case in which collective bargaining is either appropriate or required by the Act.

The case of Mr. Fisher has presented more testimony than any other. Mr. Fisher is a man, you can see from the way he acted on the stand, that wants to talk on every occasion. He always is in the right; everybody else is wrong. And no matter what happened, he always had an alibi for what happened. [829]

If one man met him, he had permission from

Mr. Kelly; if another met him, he had permission from Mr. Golem, and so on around.

It was extremely difficult to put your finger on Mr. Fisher, as to where he got authority for any of his visits around the plant.

My friend, Mr. Harrington, has given you a resume of this case, which might have stopped short before the company put on any evidence at all. Any suggestion that Mr. Fisher's testimony is incorrect is left entirely out of this matter.

I don't believe that the Examiner, who heard this testimony, is going to believe Mr. Fisher's statements with reference to what happened upon his discharge on the first of January, 1942, that Mr. Newman tore off his badge, and tore his shirt, and told him to go back to his department.

Mr. Newman was accompanied by two other men, that are employees of the company. If it means that because a man is an employee of the company, his testimony is unworthy of belief, then we are out of luck, because these things happen in a plant where the only people that would see it and can testify to it, are all employees of the company. It is significant there wasn't one single man brought from the plant to testify as to the truth of any statement Mr. Fisher has made on the stand.

And on the occasion of December 13, when Mr. Fisher was [830] found wandering out of his department, his excuse with reference to the janitors has been completely exploded by the testimony the company has presented. If you go back a moment,

you will remember that on the 10th of December, there had been a black-out, and on the 11th of December, or the 12th, I think it was, a petition was signed by some 400 men in the plant that they would like to have the plant immediately blackened out so they wouldn't lose a number of man-hours that had been lost in the black-out, they offered to do this voluntarily, on their own time.

You asked Mr. Newman, and I asked him, where that petition came from, and he said he didn't know. So far as he knew, I think he left the inference it either came from the men or the management of the plant, Plant 1. I don't think where it came from is material. If you think it is, I will try to find out.

No matter how it initiated, those men desired to get on with production, and they desired to go ahead and work, and be paid for their work instead of sitting around with a plant blacked out for hours, which kept them even from going home at the time of the closing whistle, by order of the Army and Navy.

Under those circumstances, when the bulletin was posted by Mr. Laddon, as he said, in response to Mr. Roosevelt's request for a seven-day week, war had been declared, the [831] bulletin was posted, and certain men could work if they desired, without pay, or if they wanted to punch the clock, they would get time and a half.

Maybe there should have been a consultation about that with the union. I am not prepared to state whether there should have been or should not have

been. But that petition was the natural result of the petition which had been signed by the employees two or three days before, because, you will recollect, one of the men who was here on the stand said he was a painter, and if that plant was going to be blackened out, as quickly as possible, it was essential the painters, as well as the other people, should work on that Sunday.

Mr. Fisher immediately made an opportunity to go over into the wood mill. I think you will recollect it was in the north end of the building away from where his duties should be performed; and Mr. Stark, and another foreman, telephoned to Mr. Newman and said there was a man there (I don't think they knew his name), who was talking with their men without their permission, and that on that occasion he sent for Fisher to come to his office. So far we have the testimony as to who was present, Mr. Fisher, in which he says Mr. Newman called him names, and Mr. Newman says he did not call him names, but he reminded him that there was a war on, and he also said he was on thin [832] ice, and if he didn't go back and keep to his job, he said, he didn't threaten him, but advised him to go back and keep to his job in the future. Both agreed as to the phrase: thin ice; as to the rest of the conversation, there is a divergence of recollection in reference to the matter.

Under the circumstances, it is extremely probable Mr. Newman was angry and that Mr. Fisher had got in his hair upon previous occasions, and that he sent him back to his work and told him to stay

there. He says: I am not threatening you, I am just warning you.

This testimony of Fisher's to the effect that all published notices and all rules applied to other people but not to him, must be taken as ridiculous. These two published notices that were published by Mr. Newman, as to what should be done, were official notices. If there had been any question of their not applying to him, it would be necessary for him to have a written reservation of them, or at least, some paper or some statement in writing that they didn't apply to him. He admitted on the December 13 occasion that he didn't have permission of the foreman, and he again admitted on January 1 that he did not have permission of the foreman. On the latter occasion, he had gone to a young clerk by the name of Pickett, and obtained a rover's badge.

Mr. Kimball, I think, you will recollect, testified he [833] knew Mr. Fisher had another rover's button which he kept in his possession, and he asked him where he got it and Fisher said: Wouldn't you like to know?

Mr. Fisher is just a plaint smarty-cat. He just wants, as his testimony showed, to run every department he is in. He disregarded all the rules or suggestions that he should abide by, by the ordinary rule that he must obtain the permission of his foreman, which Mr. Mineah testifies he told to him in person, and there isn't any doubt about it, because Fisher presented a grievance about that, in that Mineah had said that Kelly didn't have a damned thing, as I recall it, to do about running the parts

plant, and that he was running that department, and Fisher would have to get his permission to leave.

Mr. Fisher tried to tell you that after that grievance had been made the subject of some discussion at one of those union meetings, that he, Fisher, was sure somebody sat down on Mineah, so as to give him permission to continue as he had been doing under Mr. Golem, where he claimed when he was in the parts, in Plant No. 1, that he could go to another department whenever he wanted to.

Mr. Newman's testimony cleared up this difference between the procedure at Plant 1 and Plant 2, and also made clear, I think, as to what could be done by a union committeeman within his department, as distinguished from [834] what he could do outside of his department, and when he could leave.

At page 278 of the testimony, he said:

"A. Mr. Newman and Mr. Powell both said that they would talk to Mr. Mineah and kind of put him in his place a little bit.

"Q. At your request?

"A. No, not at my request.

"Q. Well, I mean in response to this.

"A. Yes, in response to the grievance.

"Q. In response to the grievance?

"A. Yes.

"Q. That Mr. Newman and Mr. Powell said that although Mr. Mineah told you you couldn't get out of your department without his consent, that they

were going to tell him that you could go whenever you wanted to. Was that the idea of it?

“A. No, they were going to tell him in regards to the language he used and the way that he approached me and told it to me.”

So, there wasn't any question of dressing down Mr. Mineah, or rescinding his instructions to Fisher that he couldn't leave the department without his, Mineah's, or the assistant foreman's consent.

It would be absurd in a plant of that size to suppose, [835] growing as it was, that one particular man transferred from one plant up to another could still run around all over the second plant upon the oral say-so of Mr. Powell, which had been granted to him, apparently, according to his testimony, and denied by Mr. Powell, at least eight or ten months before.

Now, it is true that Mr. Harkins and Mr. Thomas testified that in their department their foreman had given permission that they, not being chairmen of the shop committeemen, and there being, probably, few occasions upon which it would be necessary for them to do so, because there wouldn't be any necessity of their taking up grievances of people in other departments; the only time, possibly, being to go to the personnel office, or something like that; that the foreman told those two men that he trusted them, and so far as he was concerned, they could speak to his clerk, and they testified they did. Those men are highly respected and trusted employees of the company, and no one has anything to say with reference to criticism of their actions in leaving

the department, or their actions within the department. Naturally, men like that are trusted. Naturally, men like Fisher are not trusted. You can see from the man's manner, his expression, his desire to talk on every occasion (I think somebody said, here, that there never was anything that came up in the union which he didn't [836] speak about); that Fisher wanted to be heard on every subject.

When it comes to his previous discharge, which I had thought was out of the case, but Mr. Harrington still seems to rely upon it, he says that was due to Fisher's influence about the letter from Mr. Fleet about working more than 40 hours a week, that he was opposed to, and which was not adopted by the union. There isn't a bit of proof to the effect it was Fisher's influence that blocked that. He said he voted against it. He says there were others who voted for and against it. Whether Fisher had anything to do with its not being adopted, I don't know.

Then, he tried to say that Mr. Borg was not an efficient union committeeman, that he had proposed a union resolution, which Mr. Borg denied; and there is one other thing in Fisher's testimony which gives you a sidelight upon some of its truth, about that resolution. I asked him about Major Fleet's reasons, and he said Major Fleet, "wanted us to work 40 hours a week so he wouldn't have to pay us time and a half *an* any one day. He wanted to work us 10 hours.

"Q. Didn't he think that would speed up production?

“A. No, he didn’t think it would speed up production; he still don’t want to.

“Q. You are sure about it?

“A. Quite sure.” [837]

Of all the unmitigated lies for a man to tell, that is about the worst. This country was at war, and still is at war, and if he doesn’t know that Major Fleet has nothing to do with the management of that company at the present time, it is time he did know so; further than that, the fact that he says this company doesn’t want to speed of production is unwarranted, and an unmitigated bit of malicious talk on the part of Mr. Fisher. Any casual examination on a visit to that plant will show to the contrary.

Mr. Fisher knew perfectly well that when he was fired the first time, he was fired for unsatisfactory workmanship. It had nothing to do with union difficulties at all. He was taken back under the aegis of Mr. Waskey, who was president of the union at that time, and all hands agreed, except Mr. Fisher, that Mr. Waskey agreed to be responsible for his conduct in the future, and that was the reason they took him back; and he was mighty lucky to get back at that time, instead of being permanently kept out of employment by Consolidated.

As to his excuse for being in the department where he was, on January 1, 1942, with reference to the janitors, the evidence here has shown there was some talk about boots and coats, and so forth, for the janitors, in November or December, be-

tween the union and the management. The janitors at that time were all colored men. Previous to that time the [838] janitors had been white. The janitors' jobs in Plant 2 were to sweep the floors, keep them clean, and clean up the yards after the employees had had their lunches, as there is a great litter, on each one of those occasions.

None of the employees went out and had their lunches in the rain. No one meant that the janitors should go out and sweep in the rain. There are mechanical sweepers, and there is no use in going out and sweeping in the rain with a broom, anyway. The possibility or suggestion that the company was going to get those men raincoats and boots and rubber hats when they worked outside, was considered by Mr. Newman and Mr. Golem and Mr. Powell, and they decided they weren't going to do it, that the only people that were going to get those raincoats and boots and rubber hats were the maintenance men, the men that had to go out in the rain and spread tarpaulins and such, over things that had to be protected from the rain, and also people that repaired the pipes throughout the yard, when it was raining.

Fisher knew perfectly well when he was going down to see the committeeman for the janitors about the boots and coats, and so forth, that that was something that had been settled, so far as he was concerned. He was just making it again an excuse to get out of his department, whether he had a rover's button or not, and to consult with

the union shop man of the janitors about something which he knew at one time had been settled. I am not going to say anything more about the Fisher case. [839]

Mr. Mineah marked his slip, when he was discharged: "Available for rehire," in his department. There is no moral turpitude about Mr. Fisher. We didn't go into the question showing inefficiency of his work at that time. There is no testimony about inefficiency of his work which occurred prior to his first discharge. I didn't bring any testimony here, to speak of, about his work in the department when he was under Mr. Mineah. The greatest criticism of his conduct was these leaves he took from time to time. There was no statement on his blank showing the reason for his discharge, and that the company would never hire him again. If he went anywhere else, there would always be a statement of why he left, but nobody at Consolidated wants to prevent anybody from getting along anywhere else, even if he is fired for breaking rules at Consolidated, which showed on this certain slip.

As to his successive increases because of his efficiency, that is just nonsense. When he left he was getting \$1.06, of which 13 cents was the regular blanket raise which covered everybody in the plant, in October of 1941. Five of that brought it down to 93 cents. Then, there was a five-cent additional raise in July. That brought it down to 88 cents, so that from the time he entered the company's employ at 75 cents up until the time he left, when he

was getting 88 cents, he only got a 13-cent raise in two or three years; and you [840] have heard plenty of testimony here as to the raises that men get, hourly, during the six months review, that are in excess of that, in one jump.

I am going to take up this question of refusal to bargain. Our position with reference to Mr. Fisher and Mr. Williamson, as we are trying to give it to you here, is that it is clear that neither one of the discharges was caused by union activities; that Mr. Williamson was discharged because of a scene which was created in the plant; that he was restored, rehired, for duty; that he lost no seniority; that he is now working where he wants to work, or did, before his leave of absence, and the entire matter was settled entirely to the satisfaction of the union, and is a matter too trivial to be made a subject of a hearing such as this.

With respect to Fisher, we likewise say he was not discharged for union activities.

During the entire course of this hearing you have not heard of any accusation of people being discharged for union activities, except dragging in Mr. Mergen, as the third of these three men who were discharged. At the time under consideration, Mergen's case is not before you at all, except as to the point that the company declined to reinstate Mr. Mergen after many consultations, and his case is not before you for adjudication.

Think of it. Of the thousands of people in this plant, [841] and I think the testimony shows there were 273 union shop committeemen and at least

125 stewards at the present time, out of all those people, the only people they could dig up, with reference to discharge, (and there must have been many, because of the constant turn-over,) are these two; Fisher and Williamson. And if ever a man richly deserved discharge for violation of company's rules and general unsatisfactory conduct with reference to rules, Mr. Fisher deserved it, and should not be reinstated.

With reference to the claim that the company refused to bargain on certain matters, first of all, it is alleged that we circulated among the employees a petition to work on Sunday, December 14th, for time and a half. That was brought about by reason of the petition which had been signed on the 11th by four or five hundred of the employees, in which they volunteered their services. Will you read that exhibit? It says, "We volunteer our services with reference to blacking out the plant," and so forth. Immediately that was brought to the attention of the company, and remember, the union tells us here that regardless of the provision in the contract to the effect that there will be no strike or slow-down during the continuance of this agreement, (that is in paragraph 23,) they actually considered picketing the plant when that notice was published, in spite of the fact that the United States had gone to war several days before. [842]

It is extremely likely the management would want to get that plant blacked out, and they would want to speed up production, and they would want

to comply with the President's request for a seven-day week. If that is failure to bargain, in putting out that petition, it is a failure to bargain. It was immediately conceded, when it was brought to the management's attention, that the men that worked on that Sunday would receive double time pay.

This is another one of these things which has happened in the past, and is gone; and why it should be made a subject of the present charge that this company now refuses to bargain, is beyond me to say. That is another thing which is past, and over the hill.

Now, on the interim wage increases, there were some 300 of those which occurred, and the testimony will show in one department, the inspection department, that was settled in this way: Mr. Roy Brown, I think, testified the union did not care very much what was done with reference to them, although the company might have agreed to rescind them. And he thought the damage had been done by reason of the fact that the changes and increases had been made without consultation with the union and, apparently he figured at that time there was nothing the company could do to cure the matter; perhaps the only thing the company could do might have been to rescind the pay increases and take them away [843] from the men who received them.

Naturally, they didn't want to do that, and I think Mr. Brown is an extremely fair-minded individual, and I don't think he wanted them to do that either. At least, his testimony and the letter he wrote, which is in evidence, said that.

That went on to the point where there were constant talks about these interim wage increases and they finally got to the point where Mr. Leigh put out a memorandum consulting union committeemen on interim wage changes, which was dated April 11, 1942. That was got out with the full approval and consent of the union, and I think they testified they participated in its authorship.

Mr. Fleet, along in November of 1941, had Mr. Laddon put out a memorandum that there weren't going to be any more interim wage increases until the next wage review board in April of 1942; with that notice, he thought he had given the union about enough. You will recollect they got a five-cent increase; then they got a 13-cent increase, and then they had taken a strike vote with reference to those increases, and after they got the 13-cent increase per hour for every man in the plant, it probably didn't occur to the Major that there was any necessity for going on with wage increases for a while. And maybe he forgot about the contract. I don't know. He put out a bulletin and the union [844] objected to it and it was made the question of bargaining all through January and February.

Finally, Mr. Laddon put out another bulletin, which was dated January 22, 1942, that is Exhibit No. 7, as soon as they brought it to his attention. In that bulletin he said they would have interim wage increases after consultation with the union committeemen in the various departments, between the foremen and the union committeemen. Then

they worked it out further, and they went on, and after a great amount of consultation, they worked out the exact machinery as to how it should be done, in this Respondent's Exhibit 1, which has attached to it not only the memorandum from Mr. Leigh, in which he says: This is going to be done, but it also has attached to it the processes from which it was gotten up.

This sheet says: Interim wage recommendation. Name, department, clock number, present base rate, proposed increase, classification, foreman's comments, and committeeman's comments. This was to be followed in the future, and was to the complete satisfaction of the union as to the future. Although these men did receive the increases, in the inspection department previously, still they retained them. They were not taken away from them.

Another dead horse, which has no bearing at all is on the company's present attitude with reference to interim wage [845] increases, and as to which you have not heard a single bit of complaint; the only complaint you have heard is from us, that according to the policy of the union as published in their paper, and as admitted here by Mr. Shannon, the non-union man is the man that was discriminated against in the wage review cases, in violation of this provision in the agreement by which the union agreed, in respect to the company's agreement, that it will not discriminate against the union, and the union will not discriminate against the non-union men.

Now, the out-of-state hires, there is another one. There are four exhibits here: 11-A, B, C and D, with reference to these 22 men that were hired out of state as expert machinists and brought here. After they got here maybe, in some cases, the company was at fault; in others, the company claimed the men were not qualified to do the job they were hired for. In any event, some adjustment of wages had been made without consultation with the union, and after a number of bargaining meetings with the union, the letter from Mr. Fleet to Mr. Wilkerson, Exhibit 11-A, and the letter from Mr. Fleet to Mr. Wilkerson dated April 16, 1942, and the letter from Mr. Wilkerson to Mr. Fleet dated April 21, 1942, and another from Mr. Wilkerson to Mr. Wiseman, dated March 31, 1942, that was settled to the complete satisfaction of the union. That is another thing that is completely out of [846] this case, so far as the company's attitude at the present time is concerned.

We come to the question of the third shift. I don't think Mr. Harrington was quite right on what he said about that. He has quoted from his own witness' testimony. They did testify this matter of the third shift was taken up and was talked over with the union before the company decided to go on a three-shift basis, and the union's witnesses went so far as to say it was changed from two-shift to three-shift operation at their request. Then came the question as to the third shift on Sundays. Mr. Fleet testified that that matter of the third

shift on Sundays was made the subject of a number of consultations between the committee for the company and the committee for the union. Whether he said those consultations occurred before the third shift was ordered or not, I am not quite clear; but I don't think he meant that. I think he meant that the matter of the third shift, and the hours of work had been, necessarily, taken up and talked over before the third shifts were agreed upon.

Whether the question of overtime, or double pay, was a subject of those conversations, also, I do not think the testimony is clear about. But as to that, there is a plain difference of interpretation of an agreement. It isn't a question of refusal to bargain collectively; it isn't a [847] question of discrimination against the union. But the company took one position, that the union agreement should be construed in a certain way. This was on one particular day of the week; and the union took another position, and has never requested arbitration of the matter, but instead, made the matter one of complaint that we refused to bargain.

We have bargained all we can with reference to the matter, and the proper procedure in that case would be for the union to ask arbitration with reference to it, which we will gladly meet, and we will go before any impartial arbitrator at any time, and do away with the necessity of the expense of these proceedings, and get down to a quick decision, as we did with Mr. Robert Littler, when he was the impartial arbitrator on one or two other matters that came before us.

The next subject is the complaint about the crane operators. I confess I really do not get that. I thought I had got it. I thought that was one of these things still outstanding, (there had been a difference of opinion about it), until I remember Mr. Perry's redirect examination. Mr. Harrington asked him: "Mr. Perry, I believe you said the crane operators' cases had been adjusted in wage conference. Have those been individually adjusted?"

"A. They have.

"Q. Or were they mass adjustments? [848]

"A. They have.

". . . As soon as this action on the part of Mr. Wiseman was consummated, then we debated with Mr. Walsh as to exact action, and his statement was that the National Labor Relations Board—

"Mr. Riggs: I object to what Mr. Walsh said . . .

"The Witness: They have been settled on the individual basis, to the best of my knowledge."

There is another one of those things that is practically out of the window. I really don't know what it is brought in for. The crane operators got a rate of 75 cents an hour and they were increased; and they got the blanket increase, and then other men employed by the company, as they came in, naturally, they not being experts and not being with the company as long as the other men, they didn't get the same rate. The union apparently thinks that any man who comes into the plant is a robot, and after a couple of weeks is as good as the men who have been on the job a long time.

This was settled individually, so Mr. Perry says,

in the wage review board after negotiations between the company and the union and after consultation, apparently, with Mr. Walsh.

Now, we come to the question of job classification. There is very little I can add to that, outside of Mr. [849] Fleet's testimony. Mr. Fleet gave you the history of this company's relations with this union, how the job classification matter came about with the other aircraft companies in Southern California, that the job classification and stabilization had been made the subject of two consultations with the union in July of 1941, and the other companies also, and in the one in August of 1941, in Washington; and that it was at the request of Mr. Sidney Hillman, of the O. P. I. that the companies on this Coast undertook to stabilize wages and classify all the jobs. He also said there had a meeting as recently as July and August, and other meetings which I believe are in the offing, as soon as they can be called in Washington, with reference to the matter.

It is obviously impossible for one company on this coast to establish a classification of jobs and rates of pay with reference thereto which are not substantially outlined with the other companies. The purpose of stabilization is to provide a stabilization of wages and of jobs and also, to prevent migratory workers from leaving one place and going to another in search of better conditions and pay; and also, to bring up the standards of pay to a proper standard. That, obviously, cannot be done without the concurrence of the companies on this coast and of the va-

rious unions which are represented as the bargaining agents of the respective companies. [850]

This is a matter which has now passed out of this company's hands into the hands of government, and until that is done, until government has issued some fiat, or has called a conference to get somewhere with the matter, we have got to go along in our own way, which provides for individual judging of the individual man's merit, as to a wage increase.

Most of these union agreements have either one provision or another. They have the provision for collective bargaining about job classifications, or they have the provision for collective bargaining with reference to the individual; and, it is impossible to have your cake and eat it too.

This union has chosen the way of the agreement, which provides that every man should be judged individually upon his merit at the end of each six months of employment. That has been done, and it has worked out to the extent that wage reviews in on every month, will be held for men who have passed April, May, June, July and August, and from now the six months' anniversary. Whether it is satisfactory or whether it isn't, it is the way the union and the company have agreed to, and it is in process; that, naturally, excludes the bargaining with reference to job classifications, rates of pay, as well as the judgment of the merits of the individual.

Coming back to the testimony affecting, probably, Mr. [851] Shanahan and the Treasury Department alone, this is a collection of trivial complaints, which Mr. Shanahan, I think, explained when he

was on the stand. This one on Mr. Shannon, who has now become a shop committeeman, and testified that Mr. Shanahan had said to him: You had better cut out this union stuff, and so forth, Mr. Shanahan denied. Mr. Shanahan has five union committeemen in his department, and none of them said he said anything about this. Mr. Shannon is a fresh, brash, young committeeman. He conceived it to be his duty to grab for the moon every time there was a suggestion for an increase for a union man. You will remember he said he went into the department to find out which were union men and which were non-union men, and that he did bring here, finally, the names of some six or seven, out of 125, that he said finally they got at the wage review board that the foreman originally recommended, and that was only after a struggle, after his friends on the board had adjourned, and quieted him down, and then he agreed to what the foreman had originally agreed upon.

So far as the non-union men were concerned, there was a man named Kreutchcamp, and another man, who were non-union men. When Mr. Shannon pointed out to him, after the wage review board, that these men got an increase of something like three or four cents an hour less than the union men, and asked him to take it up, and to agree to sign the slip [852] that they should get the same as the union men, he came back with another demand: No, unless the union men got another three or four cents an hour, which would again put them, the non-union men, behind the union men.

They didn't get very far with Mr. Shanahan.

Mr. Shannon insisted at every wage review, except for the six men he spoke of, that all should go to the master board instead of being settled as most of the others were, in the primary board, with wage adjudication.

I can't see any union discrimination in that case. If there was any union discrimination Mr. Shannon would not be there. He is still there, and he is still shop committeeman, and how he can say Mr. Shanahan was going to get him removed as a shop committeeman I don't know. I do not believe Mr. Shanahan has that much influence with the union.

Now, Mr. Condon was a young gentleman who was a union shop committeeman for four days.

Trial Examiner Hektoen: Aren't we arguing about the facts now?

Mr. Riggs: That is all I am trying to do, yes, sir.

Trial Examiner Hektoen: You were to give me your position with reference to the law, I thought, more than these things. If you wish to go ahead, that is all right, but I do not think it is essential.

Mr. Riggs: I am sorry, if I have taken up your time. [853]

Trial Examiner Hektoen: Not at all.

Mr. Riggs: All I have been trying to do is explain the facts.

Trial Examiner Hektoen: And I am very eager to have them.

Mr. Riggs: I do not see that the law is clear at all, but I think the Examiner has had sufficient experience, probably, to fit the law into the facts after they have been developed. I am going into

agreed with that, that there is no latitude on the part of union shop committeemen, or the chairman of the committeemen, or anybody else in connection with the union, to solicit enrollment in the union upon company time or during company hours.

In conclusion, I would like to present a brief on the law, as soon as we have time, if you think that would be of any benefit to you. I do not want to have to go into the facts again. I am satisfied on some of these questions of veracity, particularly between Newman and Fisher, and some of those matters, that the Examiner cannot help but believe the company's version of these matters is correct. [856]

There is one thing I have overlooked, I see in my notes, and I do not want to overlook it, and that is the question of Perelle's memorandum, which was Exhibit 10 here, about men who would be put on salary. I think there were some ten of them getting out of the union, or having their union dues changed.

I examined somebody on one of those, I think the name of Loretta Murphy came up, and it was agreed she was still in the union and paying dues, and probably there are some of the others here, I have forgotten the extent that I went into that.

I do not know what the union's rules as to eligibility are. I presume if I was eligible to the union and they wanted me, I could join, but they certainly couldn't represent me as bargaining agents with the company, because that only ap-

plies to the hourly paid employees. The usual procedure, I think, as it has been testified to, is that when a man has been transferred from an hourly pay to salary, the company writes to the union and asks whether they want to have him released; and if they want him released, he is, and if they don't, he is not released. I think that is the procedure. Am I incorrect?

Mr. Roy Brown: I wish it were, but that is not the procedure.

Mr. Riggs: I can only say about Perelle's memorandum, [857] that I don't think any great harm was done by it. Maybe he hadn't consulted with counsel, or anybody else, as to what the provisions of the agreement were with reference to union dues and hourly employees. I don't think it is a matter of moment here, as to what happened in those precise contacts.

I can only say that I thank you for the patience with which you have listened to the case and the expedition with which you have run it off.

Trial Examiner Hektoen: Thank you very much.

May I ask you a couple of questions, Mr. Harrington, that are raised by Mr. Riggs? What about this arbitration setup?

Mr. Harrington: With respect to what, Mr. Examiner?

Trial Examiner Hektoen: With respect to many of the things that are in issue in the case. Mr. Riggs says the union hasn't gone through all the steps that are provided in the agreement, by not

asking for arbitration. What is your answer to that?

Mr. Harrington: The answer to that, of course, is that once again, the union is not required to go to arbitration under the Act. The Act states specifically that remedies excluded will not be affected by any other means of settlement.

Trial Examiner Hektoen: I understand that. It just [858] simply chooses to do that, rather than to go through the processes set up in the agreement. Is that correct?

Mr. Harrington: I don't know what the union's reasons would be as to specific cases. They have taken quite a number of them to arbitration. It may be the union feels arbitration is not satisfactory; that these violations continue.

Trial Examiner Hektoen: There was another interesting point Mr. Riggs raised. He seems to say, if I understand correctly, that inasmuch as it provides in the agreement that individual rates shall be bargained about, classifications are, therefore, excluded as a matter for collective bargaining. Is that right, Mr. Riggs?

Mr. Riggs: Substantially, yes, sir.

Trial Examiner Hektoen: All right. What is the answer to that?

Mr. Harrington: I don't think that follows at all. The fact is, this classification was set up unilaterally by the company, in the matter affecting rates and working conditions of these employees.

Trial Examiner Hektoen: And you think no

matter what is in the agreement, that is also a matter for collective bargaining?

Mr. Harrington: Yes.

Mr. Riggs: May I say, in response to that, whether or [859] not any particular individual comes within a certain classification, whether it is a minimum or top or rate range or classification of a job, is a matter for judgment upon that individual in the wage review board, and if it is a matter of grievance, it can be made a matter of arbitration.

Mr. Harrington: But you would have arbitration on probably 30 or 40 thousand cases at that plant.

Trial Examiner Hektoen: We have had testimony to that point, that it would be almost impossible.

Thank you very much, gentlemen.

There are one or two announcements before we close the record.

Mr. Ryan: Mr. Examiner, at this time we move to amend the complaint in this proceeding to conform to the proof, with respect to the correct spelling of names, dates, places, and matters of that kind.

Trial Examiner Hektoen: Formal matters; any objection, Mr. Riggs?

Mr. Riggs: I have no objection, provided I know what they are.

Trial Examiner Hektoen: Such a motion is usually made in these cases, in order to get correct spelling, and so forth.

Mr. Riggs: No, I have no objection to that at all. I think it might be important that I should know if there is [860] going to be a change in the date of some conversation from one year to another, or something like that.

Trial Examiner Hektoen: No, nothing like that. You did not have anything like that in mind, did you, Mr. Ryan?

Mr. Ryan: I do not have anything specific in mind. My motion went no further than a request to make the thing conform, not to change any of the issues, or prejudice the defense.

Trial Examiner Hektoen: Let me ask the parties about the exhibits. According to my records the Board has had introduced 25 exhibits, and they are all in evidence. The respondent has introduced 14 into evidence. Correct?

Mr. Riggs: Yes, sir.

Trial Examiner Hektoen: The reporter informs me none of Board's exhibits except 2 and 3 have duplicate copies; and that on the Respondent's exhibits, 1, 2, 3, 4, and 10 lack duplicates.

Today is September 8th, and I will order the parties to furnish the reporter at her Los Angeles office, the address of which she will give you, duplicates as indicated, by Saturday, September 12th. Is that time enough?

Mr. Riggs: Yes, sir.

Mr. Harrington: That will be satisfactory.

Trial Examiner Hektoen: As I said at the opening of the hearing, if the parties desire to file briefs they may do so, [861] by addressing them to me in

care of the Chief Trial Examiner in Washington.

This has not been a very long case, and I suggest 15 days would be adequate, if the briefs are postmarked on or before the 15th day from today.

Mr. Riggs: Would it be in order for Mr. Harrington to supply me with his brief first?

Mr. Harrington: I have no intention of filing a brief.

Mr. Riggs: As I understand it, then, the brief will be entirely upon legal matters, and not a brief upon the facts?

Trial Examiner Hektoen: That is correct. I have secured a great deal of help from the oral argument of the parties, although I do not say I wouldn't like to have a brief from you, Mr. Riggs; nevertheless, under the circumstances it would not be as important as it might be without argument.

Mr. Riggs: If I decide to file one, it is to be before what date?

Trial Examiner Hektoen: Before the 23rd.

There is one further announcement, to the effect that any party may, within 30 days after the date of the order transferring the case to the Board, pursuant to Section 33, Article 1, of the Rules and Regulations, file exceptions to the intermediate report, and a brief in support thereof.

[862]

Should any party desire to argue orally before The Board, request therefor must be made in writing to the Board within 20 days after the date of

the entry of the order transferring the case to the Board.

In the absence of anything further, the hearing is closed.

(Whereupon at 4:00 o'clock p.m., September 8, 1942, the hearing in the above-entitled matter was closed.)

[Endorsed]: Filed April 27, 1943. [863]

In the United States Circuit Court of Appeals
For the Ninth Circuit.
No. 10389

CONSOLIDATED AIRCRAFT CORPORATION,
Petitioner,
v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board — Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Consolidated Aircraft Corporation and International As-

sociation of Machinists, Aircraft Lodge No. 1125, A.F.L.," the same being Case No. C-2378 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony held before Josef L. Hektoen, Trial Examiner for the National Labor Relations Board, on September 1, 2, 3, 4, 5, and 8, 1942, together with all exhibits introduced into evidence.

(2) Copy of Trial Examiner Hektoen's Intermediate Report, dated October 16, 1942.

(3) Copy of order transferring case to the Board, dated October 20, 1942.

(4) Copy of respondent's letter, dated October 26, 1942, requesting oral argument before the Board, and extension of time to file brief and exceptions.

(5) Copy of letter, dated October 28, 1942, granting all parties extension of time to file brief and exceptions.

(6) Copy of respondent's exceptions to the Intermediate Report.

(7) Copy of notice of hearing for the purpose of oral argument, dated November 18, 1942.

(8) Copy of list of appearances at oral argument held before the Board December 3, 1942.

(9) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor

Relations Board February 18, 1943, together with affidavit of service thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 21st day of April, 1943.

[Seal]

JOHN E. LAWYER

John E. Lawyer

Chief Order Section

National Labor Relations
Board.

[Endorsed]: No. 10389. United States Circuit Court of Appeals for the Ninth Circuit. Consolidated Aircraft Corporation, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Upon Petition for Review and Enforcement of an Order of the National Labor Relations Board.

Filed April 27, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit
No. 10389

CONSOLIDATED AIRCRAFT CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

STIPULATION re PRINTING RECORD

It is hereby stipulated by and between the parties hereto that the clerk be requested to print the certified transcript of record filed in the above cause on April 27, 1943 as filed, with the following exceptions:

1. Eliminate that part of the stenographer's minutes containing all testimony of Joseph J. Blake, pages 11 to 29 inclusive and pages 801 to 812 inclusive.
2. Eliminate all testimony of Edward Barnes, pages 183 to 190, inclusive.
3. Eliminate all testimony of R. B. Felton, pages 299 to bottom of page 309, inclusive, and center of page 310, beginning "Hectoen: I let it in yesterday, etc.", to 326, inclusive.

ROYAL E. T. RIGGS

Counsel for Petitioner.

ERNEST A. GROSS

Counsel for Respondent.

Dated: May 10, 1943.

[Endorsed]: Filed May 21, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION re EXHIBITS

It is hereby stipulated by and between the parties hereto that there shall be eliminated from the printed record in the above entitled cause the following exhibits:

Respondent's Exhibit 7, Consolidated Aircraft Corporation's book "Rules for Employees", issued March 26, 1940, with the exception of the following:

 "Excerpt from Consolidated Aircraft Corporation's book, 'Rules for Employees', issued March 25, 1940:

 '2. Periods of Work

 * * *

 (b) No employee is permitted to leave his department during working hours without the authority of his foreman.' "

Respondent's Exhibit 10, agreement between Consolidated Aircraft Corporation and International Association of Machinists, dated June 12, 1941.

Respondent's Exhibit 13.

Respondent's Exhibit 14.

ROYAL E. T. RIGGS

Counsel for Petitioner.

ERNEST A. GROSS

Counsel for Respondent.

So ordered:

FRANCIS A. GARRECHT,
United States Circuit Judge.

Dated: June 1, 1943.

[Endorsed]: Filed June 11, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

The petitioner, Consolidated Aircraft Corporation, herewith files a statement of the points on which the petitioner intends to rely in support of its petition for review herein:

Point I

There is no substantial evidence supporting the findings of the Board that the petitioner's conduct in connection with (a) the interim individual wage increases, (b) the petitions and notice of December 13, 1941, (c) the crane operators, (d) the employees hired outside of California, (e) the third shift and (f) job classifications, constituted interference with the rights of petitioner's employees under Section 7 of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Point II

The findings of the Board that the petitioner's conduct in connection with (a) the interim individual wage increases, (b) the petitions and notice of December 13, 1941, (c) the crane operators, (d) the

employees hired outside California, (e) the third shift and (f) job classifications constituted interference with the rights of the petitioner's employees under Section 7 of the Act are contrary to law.

Point III

The finding that the petitioner, by the statements of Superintendent Liegal to Williamson, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, is not supported by substantial evidence and is contrary to the law.

Point IV

The finding that the petitioner, by the statements of Foremen Liegal and Powell and Plant Manager Newman to Fisher, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, is not supported by substantial evidence and is contrary to law.

Point V

The finding that the petitioner, by the statements of Treasurer Shanahan to Condon and Shannon, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, is not supported by substantial evidence and is contrary to law.

Point VI

The finding that the petitioner, by the acts and statements of Labor Relations Director Wiseman and Vice President Perelle in requiring employees to give up their membership in the Union when

they were promoted, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, is not supported by substantial evidence and is contrary to law.

Point VII

In order to justify the present entry of an order directing the petitioner to cease and desist from unfair labor practices there must be substantial evidence as to a course of conduct of unfair labor practices in the past from which reasonable inference can be drawn that such practices are likely to continue in the future.

Point VIII

A cease and desist order is unjustified upon the record.

Point IX

The Board erred in overruling the objection of the petitioner to the admission in evidence of Board's Exhibits 8(a) to (e) inclusive.

Point X

The order entered by the Board on the 18th day of February, 1943, should be annulled, vacated, and set aside, and the Board should be ordered and directed to dismiss the complaint and proceedings.

Respectfully submitted,

PRUITT, HALE AND
COURSEN

Attorneys for Petitioner
420 Lexington Avenue
New York City.

ROYAL E. T. RIGGS

Royal E. T. Riggs
Of Counsel
New York City.

San Diego, California

Dated: June 2, 1943.

Receipt acknowledged this 5th day of June, 1943.

ERNEST A. GROSS

Ernest A. Gross

Acting General Counsel
National Labor Relations
Board.

[Endorsed]: Filed June 12, 1943. Paul P.
O'Brien, Clerk.

No. 10389

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CONSOLIDATED AIRCRAFT CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Brief of Consolidated Aircraft Corporation Petitioner.

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No. 10389

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CONSOLIDATED AIRCRAFT CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF FOR PETITIONER.

Jurisdiction.

This case is before the Court upon petition of Consolidated Aircraft Corporation for review of and to modify or set aside an order of the National Labor Relations Board issued against the petitioner (hereinafter sometimes called the "Company") requiring it to cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

The petition was filed pursuant to Section 10(f) of the National Labor Relations Act (49 Stat. 449, U. S. Code, Title 29, Sections 151-166).

The National Labor Relations Board, in its answer petitioned for the enforcement of its order pursuant to Section 10(c) of the Act.

The Company is a Delaware corporation having its principal place of business in San Diego, California, where the alleged unfair labor practices occurred.

Order [Transcript of Record p. 89];*

Petition [Transcript of Record p. 122];

Answer [Transcript of Record p. 130].

Statement of the Case.

The proceedings before the Board were instituted by a second amended charge filed on July 17, 1942 by National Association of Machinists, Aircraft Lodge No. 1125, A. F. L. (hereinafter called the "Union"), whereupon the Regional Director for the 21st Region (Los Angeles) issued a complaint [Board's Ex. 1-B, 4] dated July 23, 1942, alleging that the Company had engaged in and was engaging in unfair labor practices within the meaning of Sections 8(1), (3), and (5) and Sections 2(6) and (7) of the National Labor Relations Act. The Company answered denying such charge [16].

The Company admits that it is engaged in commerce [Stipulation, 143].

The Company has its main office and plant at San Diego, California, and is engaged in the design, development, manufacture and sale of aircraft, aircraft parts and accessories. It is one of the largest manufacturers

*All references hereafter are to numbered pages of the Transcript of Record.

of flying boats in the United States, one of the largest contractors with the United States Army and Navy for aircraft, and its San Diego plant is the second or third largest airplane manufacturing establishment in the United States [Stipulation, 143].

It has two plants at San Diego, one called Plant One, or the Home Plant, consisting of a number of buildings, in which it manufactures bombers for the United States Army and flying boats for the United States Navy, and Plant Two or the Parts Plant, separated at a distance of approximately one-half mile. The latter plant was erected by the Defense Plant Corporation for the Company at a cost of approximately \$22,000,000. This latter plant is devoted entirely to the manufacture of parts for airplanes and airplane accessories and consists of four or five various buildings.

Army and Navy regulations do not permit the Company to state the exact number of its employees. There are nearly one hundred different departments in the Company's operations. It employs 47 general foremen, 6 assistant general foremen, 149 foremen and 247 assistant foremen [252]. According to the provisions of the contract with the Union, hereinafter referred to, the Union has in the Company's plants 270 union shop committeemen and 125 union stewards [Phillips, 226]. From these figures the magnitude of the Company's operations may be inferred. Its extremely rapid growth in the last two years was conceded [250].

Pursuant to various proceedings before the Board (2 N. L. R. B. 772; 7 N. L. R. B. 1061; 8 N. L. R. B. 205) the Company entered into an agreement in 1939 with Aircraft Lodge No. 1125 of the International Association

of Machinists, A. F. L., recognizing it as the collective bargaining representative for all hourly paid employees. The original agreement is not in the record and is not material.

Upon its expiration, pursuant to negotiations which lasted a number of weeks, the Company and the Union entered into a successor agreement on June 12, 1941 [Board's Ex. 3, 146], which is to endure for two years, or for the period of the unlimited National Emergency proclaimed by the President on May 27, 1941, whichever is the longer.

Some of the most important provisions of the collective bargaining agreement are:

1. The Union is recognized as the bargaining agency for all hourly paid employees and salaried inspectors [148].

2. The Company agrees to recommend to its employees that they join the Union, and to check-off dues of union members [148].

3. The Union agrees that there will be no solicitation of employees for union membership on Company time [148].

4. Rates of pay for beginners are fixed and wages of leadmen and supervisors are fixed in excess of ordinary employees [149].

5. A joint committee shall review the wage rates of each individual upon completion of each individual's six months period of continuous employment with the Company, and appeal to a higher committee and arbitration are provided for in the event of disagreement. Interim merit increases may be granted provided the foreman and

the union committeemen are consulted prior to the granting of such increases [149-150].

6. The work week is defined and provisions made for overtime and double time as provided therein [151-152].

7. By amendment of March 5, 1942, an elaborate procedure with reference to complaints and grievances is provided for [152-154].

8. The Union recognizes that the regulations in the Company's rule book are necessary for the efficient operation of the plant and that infraction of rules will constitute cause of discharge or disciplinary action [154].

9. The Company agrees not to intimidate nor in any way discriminate against any employee because of union activities, and the Union agrees not to intimidate nor in any way discriminate against any employee not belonging to the Union [154].

10. Arbitration is provided for of all matters in dispute by appointment of two members each from the Company and the Union, and the selection of an arbitrator by the Defense Mediation Board [158].

11. The Union agrees that there will be no strike or slow down while matters are being considered in arbitration [158].

The Company's labor relations in the past are wholly barren of any such unfair labor practices or disputes between it and its employees, as brought about the enactment of the National Labor Relations Act. It is well settled that the issues in this case should be considered and weighed in the light of the general background of such relations. This record does not show any past strikes, industrial strife, labor espionage, anti-union propaganda,

discrimination against union members, refusal to bargain collectively or other labor difficulties.

The Union filed a charge that the Company had discharged two employees named Fisher and Williamson in January and April, 1942 because of union activity and had refused to re-employ them in violation of Section 8(3) of the Act.

It further charged that although the Union had been duly designated the bargaining agent of the Company, that the Company had (a) given raises to 286 employees without consultation with the Union; (b) given additional raises to other employees who have not made known in writing such increases to the Union; (c) that it proposed to discuss further wage increases for eligible employees, many of the employees being the same employees for whom the Union was preparing increased demands; (d) that in 22 specific instances the Company had made individual wage agreements with employees, and that prior to February 15, 1942 the Company adopted a wage scale in cooperation with other manufacturers and refused to negotiate with reference thereto; (e) that it arbitrarily raised the minimum requirements of its nurses in its Medical Department,* and had not bargained in good faith in violation of Section 8(5) and 8(1) of the said Act. It further charged in general and broad terms interference with, restraint and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(1) of the Act.

A complaint issued by the Regional Director charged Messrs. Vernon, Shanahan, Liegal, Powell and Stuart

*This charge was dropped.

with interference with union employees; the discharge of Fisher for union activities; the discharge of Williamson for union activities; refusal to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment, and in broad and general terms coercion of its employees in violation of the rights guaranteed in Section 7 of the Act [Complaint, 4]. It will be noted that some of the specific charges contained in the Union's charge were not incorporated in the complaint of the Regional Director.

A bill of particulars was ordered by the Board, pursuant to demand [Board's Ex. 1-J, 26].

The Company's answer [Board's Ex. 1-G, 16] denying the allegation of general unfair labor practices, denied that Fisher had been discharged for union activities and asserted that he had been discharged for violation of regulations set forth in the Company's rule book; denied that the discharge of Williamson had been for union activities but stated that Williamson was justifiably disciplined for making an unwarranted disturbance at his place of work and subsequently by an agreement with the Union he had been reinstated without loss of seniority or without loss of his status as a union committeeman and averred that the Union had sent a written notice to the Board withdrawing the charges filed by the Union in connection with Williamson. Further answering the Company set forth the provisions of the agreement as to grievances and arbitration which had not been resorted to.

Pursuant to notice a hearing was held in San Diego in September, 1942, before a trial examiner, at which both the Board and the Company were represented by counsel. The Union was not represented by counsel. At the close

of the Board's case counsel for the Company moved to dismiss the complaint and each of its allegations for failure of proof, which motions were renewed at the close of the hearing and denied by the examiner thereafter in his intermediate report. Oral argument was heard and briefs filed with the trial examiner. Thereafter the trial examiner filed his intermediate report dated October 16, 1942 [32]. In the intermediate report the trial examiner found that the Company had violated the Act in that it failed to bargain collectively with reference to (1) interim individual wage increases; (2) the petitions and notice as to work on Sunday, December 13, 1941; (3) increase of wages of the crane operators; (4) fixing of wages of the third shift; (5) employees hired outside California; (6) adopting a schedule of job classifications; and had therefore refused to bargain collectively in violation of the rights guaranteed by Section 7 of the Act.

A very large part of the record was taken up with the controversy as to whether Fisher, chairman of union shop committeemen, and Williamson, shop committeemen, had been discriminated against and discharged because of union activities. The intermediate report found against the Company on those issues. It further found that there had been interference, restraint and coercion in the cases of several employees—Condon, Shannon, and employees referred to in a memorandum from C. W. Perelle, the Vice President; that the charges with reference to coercion of Blake and Barnes had not been sustained.

The intermediate report recommended that Fisher be immediately reinstated but did not recommend reinstatement of Williamson because he had been previously reinstated by the Company to the satisfaction of the Union, and that the Company affirmatively agree to bargain collectively with the Union, and post a notice that it would not engage in the conduct from which it is recommended that it cease and desist, viz., refusal to bargain collectively, discrimination in regard to the hire and tenure of employment and in any other manner interfering with or restraining or coercing its employees in the exercise of the rights guaranteed under Section 7 of the Act.

The case was argued orally before the Board in Washington, where both the Union and the Company were represented by counsel. On February 18, 1943 the Board handed down its decision and order [90] in which the Board dismissed without prejudice charges that the Company had refused to bargain collectively within the meaning of Section 8(5) of the Act; dismissed without prejudice the charge that the Company had discriminated with regard to the discharge of Fisher and Williamson within the meaning of Section 8(3) of the Act and found affirmatively that the Company had not engaged in unfair labor practices within the meaning of Sections 8(5) and 8(3) of the Act [118], but found that the Company had interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and issued an order that the Company cease and desist from such practices and post a notice with reference thereto in its San Diego plant. The evidence as to the acts of interference, restraint and coercion is discussed under the respective points.

OUTLINE OF ARGUMENT.

Point I.

The Company's conduct in connection with (a) the interim individual wage increases, (b) the petitions and notice of December 13, 1941, (c) the crane operators, (d) the employees hired outside California, (e) the third shift and (f) job classifications did not constitute interference with, restraint or coercion of the rights of the Company's employees guaranteed in Section 17 of the Act.

The evidence as to the matter referred to is not in substantial dispute. In fact, it is uncontradicted. The Company contends that where a collective bargaining agreement has already been entered into, acts resulting from difference of interpretation of the agreement, which can be made the subject of grievances and which must by the terms of the agreement be submitted to arbitration in the event of dispute, are not a failure to bargain collectively, as found by the Board [Finding 5, 118], and are not in law acts of interference with, restraint or coercion of its employees affecting commerce; that under the circumstances of the case none of the unilateral acts found by the Board constitute acts of interference with, restraint or coercion of its employees under Section 7 of the Act.

Point II.

The Company by the statements of its employees to Williamson and Fisher has not interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The statements referred to by the Company employees to Williamson and Fisher were conversations which preceded the discharge of both Fisher and Williamson for alleged union activities. The circumstances surrounding Williamson's discharge show that he was not discharged for union activities. Fisher was discharged for persistent violation of rules. The Board has dismissed the charges, founded upon such dismissals, that the Company engaged in unfair labor practices [Finding 4, 118].

Point III.

The Company by the statements of Treasurer Shanahan to Shannon has not interfered with, restrained, and coerced its employees, as the circumstances show that such statements were fully justified in criticism of the attempt of the Union in the wage review board to coerce non-union men into joining the Union in violation of the contract providing that it would not discriminate against non-union men. The remarks to Condon were isolated and trivial.

Point IV.

The Company by the bulletin of Vice President Perelle requiring employees to give up their membership in the Union when they were promoted from hourly wage to salary has not interfered with, restrained, or coerced its employees.

The record does not show that anything resulted from the acts or statements of either Wiseman or Perelle.

Point V.

In order to justify the present entry of an order directing the Company to cease and desist from unfair labor practices there must be substantial evidence as to a course of conduct of unfair labor practices in the past from which reasonable inference can be drawn that such practices are likely to continue in the future.

Point VI.

A cease and desist order is unjustified upon the record.

The Issue.

The Board found that the Company had not engaged in unfair labor practices within the meaning of Section 8(3) of the Act, as alleged in the complaint as to discrimination in the hire and tenure of employment of employees, and that it had not engaged in unfair labor practices within the meaning of Section 8(5) of the Act by refusing to bargain collectively with its employees, but that it had interfered with, restrained and coerced its employees in the exercise of rights guaranteed under Section 7, within the meaning of Section 8(1) of the Act. The Board held that all of the matters in which it was claimed that the Company had taken unilateral action, while not a failure to bargain collectively because they involved the interpretation of a collective bargaining agreement already in existence and were subject to mandatory arbitration, constituted interference with, restraint or coercion of the rights of the employees, and that various statements of supervisory personnel of the Company had been made which similarly interfered with, restrained or coerced its employees.

Section 7 of the Act is as follows:

*“Rights of Employees:—*Section 7—Employees shall have the right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

Section 8(1) of the Act provides that interference with, restraint or coercion of its employees in the exercise of the rights guaranteed by Section 7 constitutes an unfair labor practice.

The case presents for determination the question whether the acts and statements of the Company made subsequent to an agreement of collective bargaining already entered into with representatives of its employees, did, in fact or in law, amount to an interference with, restraint of, or coercion of the Company's employees in the exercise of the rights guaranteed under Section 7.

ARGUMENT.

POINT I.

The Company's Conduct in Connection With (a) the Interim Individual Wage Increases; (b) the petitions and Notice of December 13, 1941; (c) Crane Operators; (d) Employees Hired Outside California; (e) Third Shift; and (f) Adoption of the Schedule of Job Classifications Did Not Constitute Interference With, Restraint or Coercion With the Rights of Its Employees Under Section 7 of the Act.

The decision and order of the Board dismisses the charge that the Company failed to bargain collectively with reference to the matters enumerated. The Board's decision comments upon the Company's willingness to bargain with the Union as to these matters after objection had been made by the Union, points out that all but two of these issues had been amicably settled as a result of collective bargaining between the parties prior to the hearing. It further points out that as to the two unsettled issues, the third shift and the job classification schedules adopted by the Company, the Union made no attempt to utilize the grievance or arbitration machinery established by its collective bargaining contract with the Company. The contract provided that any dispute between the parties as to the terms, conditions or rates established in the agreement must, if not amicably settled, be taken to arbitration.

The Board, in its opinion, stated "We are of the opinion, however, that it will not effectuate the statutory policy of 'encouraging the practice and procedure of collective bargaining' for the Board to assume the role of

policing collective contracts between employers and labor organizations by attempting to decide whether disputes as to the meaning and administration of such contracts constitute unfair labor practices under the Act. On the contrary, we believe that parties to collective contracts would thereby be encouraged to abandon their efforts to dispose of disputes under the contracts through collective bargaining or through the settlement process mutually agreed upon by them, and to remit the interpretation and administration of their contracts to the Board. We therefore do not deem it advisable to exercise our jurisdiction in such a case, where the parties have not exhausted their rights and remedies under the contract as to which the dispute has arisen"* [111].

Nevertheless, the Board found that by the Company's unilateral action in regard to matters within the scope of its contract with the Union, the Company had engaged in unfair labor practices.

*The Board's decision, in substance to the effect that differences of opinion as to the interpretation of a collective bargaining agreement already entered into do not in themselves constitute further failures to bargain collectively, is in accord with its decision in the *Matter of Essex Wire Corp.* (1940), 19 N.L.R.B. 51, in which the concurring opinion of Mr. Leiserson stated (pp. 65, 66) :

"We have here no question of a refusal to bargain collectively but a simple and typical dispute as to the meaning or application of a provision in an existing collective bargaining agreement. * * * Any attempts to handle such disputes about the meaning of agreements by charges and complaints of unfair labor practices can only result in breaking down of collective bargaining and the administration of agreements between employers and unions.

"It was clearly not the intention of Congress that differences as to the interpretation or application of agreements should be treated as unfair labor practices under Section 8 of the Act. I am of the opinion therefore that the complaint should be dismissed."

This reasoning applies with stronger effect where the agreement itself provides for mandatory arbitration, as in the collective bargain agreement in this case.

In this instance the employees had already organized, formed or joined a labor organization. They had bargained collectively with the Company through their own representatives, the results of which had been formulated in the contract between the Company and the Union which had been in force for several years. They had already joined together for mutual aid and protection. The Company agreed to recommend to its employees that they join the Union. How then can action by the Company which may be made the subject of grievances and arbitration be regarded as violation of the rights under Section 7?

It is necessary to emphasize this point by reference to the undisputed facts.

(a) INTERIM INDIVIDUAL WAGE INCREASES.

In November, 1941, the Company's works manager, without consultation with the Union, informed all department heads that no further interim increases of wages were to be granted until April, 1942. Subsequently, in January, 1942, after conferences as to protests of the Union, the Company published a bulletin to all department heads revoking this notice as follows:

"Consolidated Aircraft Corporation
San Diego, California

January 22, 1942

Memo to: All Department Heads

Subject: Policy with regard to Interim Wage Increases

I have been informed that the Union has interpreted my memo of 11 November 1941 on the above subject as a violation of that portion of Sec-

tion 3 of the Union Agreement which reads as follows:

‘In accordance with past practice, the Company will approve interim individual increases when justified, after consulting the Foreman and the Union Committeeman of the Department concerned.’

It is this Company’s policy to comply fully with all provisions of the Union contract. If a Foreman or Department Head feels that an employee merits an increase before the next wage review period, such increase will be approved providing the new rate falls within the approved rate range for the job. Rate ranges for the various jobs have been, or will be, established under the jurisdiction of the Wage and Salary Committee.

I. M. LADDON

Vice President and General Manager”

[Board’s Ex. 7, 221.]

Subsequently, in the early part of 1942 various increases were made to employees in the Inspection Department without consulting the union committeeman and the Union again protested [Brown, 526]. The Company offered to stop the effective date of the increases and have them renegotiated between the union committeemen and the foreman or the supervisors in charge. Brown replied that what they did in relation to putting the increases into effect or not was inconsequential to the Union; that the violation had already occurred and that the Company could do what it pleased [526]. At that time the Company and the Union had not arrived at any understanding that they now have with reference to matters of procedure as to interim merit wage increases [526].

In April, 1942, after consultation with the Union, Mr. Leigh, Vice President and Assistant General Manager, issued a bulletin with reference to the consultation with union committeemen on interim wage changes [Respondent's Ex. 1, 253]. This bulletin provided in detail for the procedure to be followed by the foreman with reference to consultation with union committeemen as to interim merit increases of employees. It provided that if the foreman and the committeeman agreed to the change it could be initiated at once, but otherwise the matter was to be referred to the general wage committee, which was to meet and review all proposed merit increases.

Mr. Roy Brown, Grand Lodge representative, testified with reference to this matter:

"We arrived at a satisfactory solution to handle all of those particular cases and also the cases in the future, but only after the damage had been done by the action of the Company in that case.

Q. Would you consider that the Company did the best it could to repair the damage? A. Well, let's say that the Company sat down and bargained with the Union at a date after this offense had been committed and we had arrived at a satisfactory conclusion" [527].

Phillips, the union business agent, testified:

"Q. Can you state of your own knowledge any case at the present time where that procedure outlined by Mr. Leigh is not being followed? A. No, I think the Company is following it very closely at the present time" [257].

He also said:

"If this is followed in the future it will suffice" [257].

(b) THE PETITIONS AND NOTICE OF DECEMBER 13, 1941.

There never was an episode which less justified a charge of interference with employees' rights than this particular affair.

The attack on Pearl Harbor had occurred and war had been declared on December 7th. The Company's plants in San Diego are located on the Pacific Ocean in as vulnerable a position for air raid attack as can be found anywhere in the United States. It is engaged exclusively in the production of heavy bombers and flying boats for the United States Government. There was intense apprehension that the raid upon Pearl Harbor might be followed by raids upon airplane plants on the Pacific Coast.

On December 10th a blackout had been ordered by the Army which blacked out the complete plant and threw all the men on the night shift completely out of work. The number of man hours lost was sufficient to have built a complete B-24 bomber [Superintendent Newman, 835]. The plant then had glass skylights and windows. A petition was signed by the men on the night shift at the Parts Plant the next day asking that the plant be blacked out, and volunteering to do the work on their own time [Respondent's Ex. 12, 788]. This petition, a sample of which is included in the record, demanded that necessary steps be taken immediately for the complete painting of all windows, roof skylights, and white stucco walls throughout the entire plant, and stated:

"It is the will of the undersigned to continue the work during these blackouts which are so necessary and vital to the defense of our country.

"The following gladly volunteer their time to perform this task during daylight hours but we again demand immediate action."

The Company published a bulletin on Saturday, December 13th, to the effect that men who wanted to work that Sunday could do so voluntarily or by punching the clock they could obtain time and one-half [Board's Ex. 15, 339]. This notice stated that in line with President Roosevelt's desire for a seven day work week, employees who volunteered to work on Sunday could do so or others could ring their time cards and receive pay at time and one-half. The notice applied only to certain jobs in Jigs and Fixtures, Tool Room, Machine Shop, Fuselage, Paint Shop, Sheet Metal, Metal Bench, Welding and Black-out Painting, and to no other departments.

Petitions were circulated in the plant and signed by thousands of employees, of which a sample was placed in evidence to avoid a multiplicity of exhibits. It read as follows:

“Consolidated Aircraft Corporation
San Diego, California

“In view of the present war situation we, the undersigned, offer to work this Sunday at time and one-half” [553].

The Union, however, became very much disturbed and held a meeting on Saturday, December 13, after objecting over the telephone to the circulation of the petitions, and agreed to allow the members to work “and we would discuss what they were to be paid later” [Perry, 462]. There was even a discussion as to whether or not the Union would picket the plant, in spite of the anti-strike agreement [Perr, 462]. It was conceded that the matter was settled and that every employee who worked that Sunday received double time [Perry, 462, 463].

The officers of the respondent were confronted with an unexpected outbreak of war, followed by orders from the Army blacking out the plant, which seriously interfered with war production. The employees themselves signed petitions to work on that Sunday at time and one-half. Whether these petitions were initiated by the employees or by the Company does not appear in the record and is immaterial. The officers used their best judgment in this emergency to comply with the President's request and their failure to take the matter up with the Union prior to posting of the bulletin was not a violation of any employees rights.

(c) CRANE OPERATORS.

During February, 1942 there was discussion between the Union and the Company as to the pay of crane operators, the wage rates for which had been fixed in May, 1941. Between May, 1941 and 1942 there had been a 5¢ an hour and a 13¢ an hour blanket increase. The Union claimed that the increased rate should apply as a starting rate to crane operators hired subsequent the increases [Phillips, 233]. The Company disagreed, possibly on the ground that length of service, skill and aptitude would justify different hourly rates for old and newly hired men. The matter was the subject of negotiations and conferences in which each side maintained its position. No agreement was reached with reference to this issue, but the matter was subsequently settled by agreement with the Union that the cases should be settled individually by the wage review board [463].

(d) EMPLOYEES HIRED OUTSIDE OF CALIFORNIA.

About 22 men were hired by the Company outside the State of California at specific wages for specific work, mostly skilled machine work. After their arrival at the San Diego plant, without notice to the Union, the Company decreased the wages or changed the position of the great majority of these employees. The Company charged that some of the men had misrepresented their capabilities and that the Company was paying them what they were worth. The matter became the subject of continued discussions and negotiations between the Union, the Company and a conciliator of the United States Department of Labor, and the matter was settled to the complete satisfaction of the Union and amicably disposed of [See Board's Ex. 11(a), (b) (c) and (d), 295]. In some instances the Company paid the fare of employees to their homes.

(e) THIRD SHIFT.

The change in March, 1942 from a two-shift daily operation to a three-shift operation was made after full consultation with the Union [Brown, 511, 513] and the operation on three shifts was proposed by the Union and requested by the Union [Brown, 529].

He testified:

"Q. Did you want the operation on three shifts?

A. We proposed the operation on three shifts.

Q. A change from two-shift to three-shift operation was satisfactory to the Union? A. Yes. Yes. We felt that production would be enhanced by three-shift operation instead of working the men such long hours" [529].

* * * * *

“Q. But in any event, the change from two-shift to three-shift operation was satisfactory to the Union? A. The change in itself was satisfactory to the Union, but not certain features [421].

Q. Wait a minute. And requested by the Union? A. Yes. Yes.

Q. But your only grievance, then, with reference to the change from two to the three shift is in relation to what they call the graveyard shift working on Sunday? A. That is the shift from 12:00 midnight Saturday to 7:00 a. m. Sunday morning.”

It was agreed that the employees on the third shift would not only receive the 8¢ differential paid for night work, but in addition would receive 8 hours pay for 6½ hours work.

The only controversy with the Union was whether the shift on Sunday morning should receive double time or time and one-half as insisted by the Company. The contract provided that work on the seventh consecutive day should be paid for at double time [Board's Ex. 3, Sec. 5, 151]. The contract is very clear that it is only after overtime on the sixth consecutive day of work that double time is payable on the seventh consecutive day. The Company insisted that the third shift started work at midnight Monday and worked for five consecutive days, that the shift beginning at midnight Sunday constituted the sixth consecutive work day, for which time and one-half should be paid. The shift is off duty from Sunday morning at 7:00 a. m. to Monday night at midnight, affording a complete day of rest. It works only six consecutive days and does not therefore work seven consecutive days.

The interpretation as to the pay to be received by the third shift on Sunday is in accordance with the contract. It is also in complete accord with the President's Executive Order No. 9240 of September 9, 1942, issued after the hearing was closed, from which it is clear that double time is not to be paid for work on Sunday as such, but only upon the seventh consecutive day of work, so that the employer may be more disposed to grant to the employees one complete day of rest in seven. The Union failed to file a grievance with reference to this matter and failed to take the matter to arbitration. It was the subject of negotiations in which each side maintained its position. Congress never intended that this sort of a controversy should result in an unfair labor charge.

(f) JOB CLASSIFICATIONS.

The job classifications were set up by the major aircraft corporations in Southern California and they established classifications and rates to apply to the classifications [Phillips, 237].

The Company maintained that the schedule of minimum and maximum rates of pay for literally hundreds of job classifications adopted by the Company, substantially in accord with other aircraft companies in the Southern California area, were used as guides in the wage review heard. The Union charged in substance that they put a ceiling on wages and had been adopted unilaterally.

Mr. D. G. Fleet told the history of conferences with reference to stabilization of wages among the aircraft companies in Southern California, beginning in 1941. The original union contract adopted in June, 1941 provided in substance [Respondent's Ex. 10, not printed by

consent], that in the event standard rates of pay should be adopted for the industry by any executive order or ruling of the President of the United States or by the National Defense Mediation Board, the rates of pay and wage rates therein provided for should be superseded by such order or ruling [Fleet, 772].

The aircraft companies had been endeavoring at that time to work out stabilization and uniform classification of jobs at meetings called by Mr. Sidney Hillman of the Office of Production Management, with the idea that when stabilization was adopted by governmental fiat, classifications and rates of pay so adopted would be adopted by all companies.

Thereafter one of the companies adopted a minimum wage scale [Fleet, 775], and all the aircraft companies in Southern California were invited to attend a conference with reference to wage stabilization in Washington in the summer of 1941 [Fleet, 776], which was attended by executives from the aircraft companies and Union officials [Fleet, 777]. This failed because of differences between the C. I. O. and A. F. L. [Fleet, 777].

After this conference Lockheed-Vega gave a 10 cent an hour blanket increase to their employees retroactive to July 1, 1941 [Fleet, 778]. Consolidated had previously granted a 5 cent an hour increase, effective May 3, 1941 [See Board's Ex. 3, Sec. 3, 150], and the Union immediately peremptorily demanded a 10 cent blanket increase retroactive to the first full pay day on July 1 and demanded an answer in twenty-four hours [Respondent's Ex. 11]. The Company made counter-proposals [Fleet, 692] and offered a 5 cent blanket increase, as an increase of 10 cents per hour would bring the Consolidated em-

ployees above the Lockheed-Vega rate [Fleet, 783] and again result in inequalities between the companies. At this stage of the proceedings the Union took a strike vote [Fleet, 784] in spite of the provision in the agreement by which disputes must be submitted to arbitration, and in spite of the provision in Section 23: "The Union agrees that there shall be no strike or slow-down, and the Company agrees that there will be no shut-down or lock out, while matters are being considered under this section."

The matter was certified to the National Defense Mediation Board, which granted a 13 cent per hour increase in lieu of certain other provisions of the contract which were eliminated, such increase being retroactive to August 9 [Fleet, 785, 786].

Sections 2 and 3 of the Union agreement therefore were amended to show the higher pay rates negotiated under the National Defense Mediation Board and agreed to on October 18, 1941 [See Board's Ex. 3, 146].

The contract then in existence was amended to provide for an individual merit wage review for each employee upon completion of each individual's six months period of continuous employment [Board's Ex. 3, Sec. 3, 146]. In other words, as a result of this increase and the negotiations before the National Defense Mediation Board, in which the officials of the Company and Union officials participated [748], the previous agreement, by which the Company and the Union agreed to establish a joint committee to review hourly wage rates by mutual agreement, was subsequently amended to provide for the review of each individual's wage rates at the end of six months employment.

Under this provision the Union has claimed and has obtained the right to have a wage increase of each individual employee determined by the wage review board upon its merits. We maintain that by this change the Union relinquished any claim to bargain as to rates of any particular job classifications.

However, the whole matter of job classifications and wage rates of all Southern California companies then passed into government supervision. Discussions as to wage stabilization among the aircraft companies were continued at Hollywood in July, 1942 at the invitation of the War Production Board, at which both the representatives of all the companies and the employees were present [Fleet, 703-B] but broke up because of disagreement between the government agencies as to jurisdiction [703-B].

During this time the Company, without concurrence of the other companies, could not bargain with the Union and increase or decrease wage rates as to any particular job classification.

The Court should take judicial notice of the fact that since the close of the hearings in this matter the National War Labor Board has conducted lengthy hearings, at which voluminous evidence was presented by the representatives of all aircraft companies on the Pacific Coast and the representatives of the Unions, upon the question of stabilization of wages and classification of jobs. In order to confer exclusive jurisdiction upon the National War Labor Board, the Secretary of Labor on October 23, 1942, under the authority of Executive Order 9017, certified a dispute between the Company and Aircraft Lodge No. 1125 to the National War Labor Board.

On March 3, 1943 the National War Labor Board, in the matter of the West Coast Aircraft Companies, handed down a directive providing that a uniform job classification and wage rate schedule applicable to all employees of aircraft companies in the Southern California area should be established and apply in each of the California plants. Thereafter by order dated March 9, 1943 it created the West Coast Aircraft Committee consisting of five members for the Southern area, one of whom should represent the public, two industry and two labor. The West Coast Aircraft Committee now has exclusive jurisdiction over uniform job classifications and wage rate schedules for both productive and non-productive employees.

The National Labor Relations Board has been superseded and lost all jurisdiction. We maintain that by a series of executive orders, the act to amend the Emergency Price Control Act of 1942, Public Law No. 729, and the orders of the National War Labor Board, the Board has lost all jurisdiction over controversies as to job classification and stabilization of wages prior to the date of its order, and could not find at that time that the Company's unilateral adoption of wage schedule was an interference with its employees. (See Exception 85.)

The Board in its opinion disregards the Company's position with reference to job classifications with the casual statement: "It (the Company) further contends that the fact that the entire matter of wage stabilization, including job classification and wage rates, is now under consideration by the Government, makes it impossible for the respondent to bargain with the Union regarding it" [103].

We assert confidently that in no cases involving the interpretation of the Act can there be found any simi-

lar situation, in which, in order to stabilize wages in a particular area and prevent inflation, the matter of schedules of rates of pay has been negotiated between a group of companies and groups of employees under the jurisdiction of the National War Labor Board, and an individual company is held to be guilty of an unfair labor practice because of its failure, when it was unable to do so, to negotiate job classifications and wage rates within such classifications with the Union representing its own particular employees.

In *National Labor Relations Board v. North American Aviation, Inc.*, decided June 24, 1943 (C. C. A. 9th) the Board had issued an order that the Company cease and desist from its unfair labor practices, that, upon request, it bargain collectively with the Union, and inform its employees that a notice hereinafter referred to was null and void. After the formulation of a bargaining agreement with the Union, which contained a provision as to grievances, the Company published a unilateral notice permitting individual employees to present grievance directly to the management. The Board stated that the sole issue was whether, after a grievance procedure had established by agreement between the Company and the Union as the exclusive bargaining representative of all of the employees, the Company was free unilaterally to establish a separate grievance procedure for the adjustment of grievances presented individually by the employees. The Company claimed that the notice was justified under Section 9(a) of the Act which had been, in substance, incorporated into the collective bargaining agreement. This Court upheld the Company's unilateral action and set aside the order of the Board upon the

ground that the Company's action was justified. The same reasoning applies to the unilateral acts in this case.

There are cases that the action of the employer in an apparent effort to settle unilaterally a matter with respect to which the employees have requested collective bargaining is a violation of Section 8(5) of the Act. In these cases the employer, during a request for negotiation of a collective bargaining agreement, took action on the very points which the employees had made the subject of the negotiations. Such unilateral action cut the ground from under the employees pending the formulation of a collective bargaining agreement. But these cases have no bearing upon the facts of this case. The Company had entered into a bargaining agreement. The management of the Company was justified in taking a position as to the interpretation of the agreement, and in announcing its position and in maintaining it in negotiations. The Union could have taken the issue to arbitration but failed to do so. The real grievance is that the Company failed to agree with its contentions as to the third shift and job classifications. If the management of a Company which has entered into a collective bargaining agreement must consult the agency prior to determining upon an interpretation and agree with the agency, industry must surrender management to its employees. It needs no citation of the many cases to demonstrate that Congress never intended to clothe the Board with authority to order that employees may interfere with the management. Where there is a provision for mandatory arbitration of disputes in a collective bargaining agreement, thereafter acts of the Company pass out of the realm of collective bargaining and into the domain of judicial settlement by arbitration.

POINT II.

The Company by the Statements of Superintendent Liegal to Williamson and Fisher, Its Employees, Did Not Interfere With, Restrain or Coerce Its Employees in the Rights Guaranteed in Section 7 of the Act.

The Board has found that the Company had not engaged in unfair labor practices within the meaning of Section 8(3) of the Act as alleged in the complaint. In the complaint it was alleged that the discharges of both Fisher and Williamson were in violation of Section 8(3), so that the Company has been absolved of anti-union discrimination in the discharges of Williamson and Fisher. Nevertheless, the Board has found that Liegal called Williamson a "labor agitator" at the time of his discharge, and that the reason given for his discharge on his termination slip was "agitator" and that this was an interference with the rights of its employees.

It should be understood that immediately after Williamson's discharge, the Union took up the matter with the Company and that after some negotiations with reference thereto Williamson was reinstated by agreement with two weeks' disciplinary layoff. Thereupon the Union wrote to the National Labor Relations Board as follows:

“April 30, 1942

The National Labor Relations Board
United States Post Office and
Court House Building
Los Angeles, California

Attention: Mr. Roger Maguire, Field Representative
Gentlemen:

This letter will serve as your official notice that in the matter of the charges now pending against the Consolidated Aircraft Corporation, which charges were filed by myself in behalf of Aeronautical Mechanics Lodge No. 1125 and relating specifically to Mr. Oliver H. Williamson, have been settled to the satisfaction of our organization. Therefore, we wish to withdraw the particular charges against the Consolidated Aircraft Corporation.

With best regards and thanking you for your cooperation in this matter, I am

Very truly yours,

ROY M. BROWN

Grand Lodge Representative I. A. of M.”

[Respondent’s Ex. 5, 535].

Nevertheless, the Union in its second amended charge again referred to the discharge of Williamson, and the Board’s complaint [Par. 6, 6] makes a separate charge with reference to the matter. The Board’s decision finds: “With respect to Williamson, the record shows in addition that the question of his discharge was settled to the mutual satisfaction of the parties through collective bargaining, and we see no reason under the present circumstances for interfering with this settlement” [112].

We maintain that the isolated statement therefore of Superintendent Liegal to Williamson at the time of his discharge, assuming that he was called a labor agitator or agitator, is out of the case and cannot and should not be made the basis of a finding of either interference, coercion or restraint.

An examination of the circumstances under which the discharge occurred shows that Mr. Liègal's statement was fully justified and that Williamson was discharged for creating a disturbance, attacking the Company, and making a speech against the management in the plant during working hours in the presence of approximately ten other workmen when he claimed to be on his own time and not on union business.

The right to indulge in Union activities free from any restraint or coercion by the employer does not give the employee the right to vilify his employer.

In *National Labor Relations Board v. Union Manufacturing Co.*, 124 F. (2d) 332 (C. C. A. 5th) the Board had ordered the reinstatement of an employee who had been discharged for union activity and had excused the employee for calling one of his superior officers a liar and the other a gambler, on the ground that he was representing the union and was entitled to the dignity of equal standing. The Board ordered him reinstated and said:

"The presumption is that the employer has not violated the law and the burden of proof is not upon the employer but upon the one who asserts the fact, to prove that the discharge was because of union activities."

The uncontradicted testimony shows that Williamson protested because of the discharge of a young man named Brown. Brown refused to obey orders and to do a certain rush job for a foreman because the foreman spoke with a German accent [41], Brown's foreman had told him that he could quit [172]. Subsequently a plant policeman came up behind Brown and told him to pack up his tools [172], which was the usual procedure when a man was discharged [172]. Williamson said he wanted to see Brown's foreman, Hangen, to see whether Brown had quit or whether he had been fired [173], and said he would take off his committeeman's badge, put it in his pocket, go over and ring the time clock out, and have a talk with Liegal in the presence of a representative of the Federal Bureau of Investigation on his own time [175]. Williamson said:

"I still have a matter that I would like to discuss with the Superintendent about the steady advance of the German born jig builders, the constant lowering of morale and the lowering of production in the department" [177].

There was further conversation with Liegal in which Williamson claimed that Liegal said "You are one of those damned union agitators" and Williamson was thereupon discharged and his termination slip marked "Discharged—agitator" [Board's Ex. 4, 179].

Upon cross-examination he said that Brown told him the reason that he wanted to quit was that he refused to work under Ewert because Ewert did not speak enough English to understand the man. Williamson admitted there were possibly ten employees [198] who stopped work when he started to remonstrate with the officer

about escorting Brown out. He denied saying that the Axis controlled the plant and that it was full of Germans, but he did admit "I did say something that they had pushed around about eight of our good American boys while the Germans in the plant were constantly getting raised" [200], and that when he saw the policeman taking Brown out he "got hot under the collar" [197].

Williamson testified:

"Q. Wasn't Liegal pretty mad when you told him about the Federal Bureau of Investigation and the Germans in the plant, he being German, and one of the foremen in the plant? A. I imagine he was mad" [203].

Further, he said:

"Q. Why did you take off your shop committee badge? A. Because production was continuing to fall down and down and I had seen eight good American boys with Anglo-Saxon names run out of the plant, one after another, while I sat in the wage review as a committeeman, and saw every man with a German name recommended for top money, and all the talk and propaganda in the newspapers as to the falling off of production in the Consolidated plant was the fault of the Union, and I thought 'Ye Gods. Here comes a guy that is going to pin this drop in production on our organization.' That's why I took it off.

Q. It was entirely your own suggestion that you take it off? A. Yes" [204, 205].

Williamson made it clear that it was other than union business which caused him to take off his badge [205].

The testimony of Crausen, plant police officer, was that Williamson was talking very loud and had 12 or 15 men standing around him listening [559]. Williamson said that the foremen were working for a foreign Government and he heard them talk to each other in German and when any one walked up they would shut up [561]. Eastin, a foreman, testified that Williamson objected to Brown's being escorted out of the plant, and that he said in a very loud voice that that was no way to treat an American boy, that "we were foreign agents, if we discharged men indiscriminately, if we didn't treat the boys right, that we acted as foreign agents, that we were pushing good American boys around" [565]. He was shouting and almost yelling and about 9 to 15 men were clustered around him [566]. Williamson stated that this was not a union matter and ripped off his union badge [569].

Hangen, a foreman, testified that Brown refused to work under Ewert because he spoke with a German accent. Williamson stated that he was working for Nazi bosses and that

"we are gradually getting rid of all the good American boys and keeping nothing but the Germans and thought it was—he said he felt it wasn't a union problem any more; he did not care to talk with us; he preferred to call in the FBI on the case because he felt we were not the right ones to talk to about it" [75].

Liegal testified that when he was called he found Williamson with any where from nine to ten or twelve men surrounding him within a distance of five, ten or fifteen feet; that he was addressing the men in general and waving his arms around his head and very excited

and talking in a loud tone of voice [76]; that he said the Union was out of this; that in talking to the men around he said the foremen were working for the German Government, the Nazi Government and words to that effect and

“I did tell them that all of us were to some extent foreigners. I personally—my grandparents were born in Germany and naturally all of us were to a certain extent foreigners—that is, they were born in a foreign country” [583].

They then started to go to Liegal's office and on the way they met Hangen, and the matter started all over again about working for foreigners or Nazis and finally Liegal said to Hangen “This is a hopeless case do what you please about him.” Liegal had never seen Williamson before this incident [479].

No anti-union discrimination is shown in the uncontradicted testimony as to this affair in which Williamson and possibly Liegal lost their tempers. No self respecting superintendent could permit a speech of such character to be made to employees of the plant with any expectation that discipline could be maintained thereafter. No self respecting superintendent could stand for such insulting language as to be called or have it inferred that he was a German agent. There is no testimony whatsoever that Brown, as to whose discharge Williamson was concerned, was a union member. The uncontradicted testimony shows that Williamson took off his union button and voluntarily ceased to function as a union shop committeeman. It is not disputed that Liegal had never seen him before. His dis-

charge was fully testified whether he was called a "labor agitator" or a plain agitator. He was reinstated because he was a good worker and given a two weeks layoff.

Fully half of the voluminous testimony in this case was taken up with the Fisher discharge. The Board found the Company had not engaged in unfair labor practice in this discharge. The Board has found, however, that the statements of foremen Liegal and Powell, and Plant Manager Newman, to Fisher, constituted a violation of the Act.

Fisher was chairman of the union shop committeemen in the Parts Plant. The explanation of the Company as to his discharge was that he had flagrantly disregarded rules made by the Company with reference to leaving the department on union business without permission of his foreman.

The courts have always held that the question of motive is extremely difficult to determine.

In *Martel Mills Corporation v. National Labor Relations Board*, 114 F. (2d) 624 (C. C. A. 4, 1940), the court said at page 631:

"We do not lose sight of the fact that our inquiry is centered upon the motivating cause of the employer's action. The task is a difficult one. It involves an inquiry into the state of mind of the employer. Such inquiry is laden with uncertainties and false paths. Obviously our chief guide is the words of the witness under oath who undertook to disclose the workings of his mind. *If his explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation* * * *. We are not con-

vinced that the Board has offered sufficient evidence to meet its burden of proof. Isolated statements which alone carry incriminating import often lose their ominous significance when surrounded by all the facts of a given case. We do not find substantial evidence to support any illegal motive such as is proscribed by Section 8(3) of the Act.” (Emphasis supplied.)

See, also:

Quaker State Oil Refining Co. v. National Labor Relations Board (C. C. A. 3d, 1941), 119 F. (2d) 631;

National Labor Relations Board v. Sheboygan Chair Co. (C. C. A. 7th, 1942), 125 F. (2d) 436;

National Labor Relations Board v. Union Mfg. Co., (C. C. A. 5th, 1941), 124 F. (2d) 332;

American Smelting and Refining Co. v. National Labor Relations Board (C. C. A. 8th, 1942), 126 F. (2d) 680, 687;

National Labor Relations Board v. Tex-O-Kan Flour Mills Co. (C. C. A. 5th, 1941), 122 F. (2d) 433.

It is essential that the statements be examined in the light of circumstances out of which they arose.

Fisher testified that he joined the Union early in 1940 and was active in organizing his department; early in 1940 Liegal had told him that if it wasn't for his union activities he would be able to do something for him in procuring for him a job as leadman, a job that he had asked for [326]. He was discharged in July, 1940, and he claimed

that his discharge was due to the fact that he had opposed, at a meeting of the Union, a suggestion from the management that the employees work 40 hours before being paid over time [328, 329]. The reason given for his discharge, which was by Borg, the leadman of his department, was that he was unqualified for the work [327]. A grievance was filed and he was rehired in August, two weeks after his discharge, under the supervision of Waskey, who was then President of the Union. There was no testimony whatever that any one connected with the Company, knew of Fisher's action in opposing the motion or that his opposition was important. The trial examiner found that since the complaint did not allege that the respondent discriminated against Fisher by this discharge, that no finding of unfair labor practice was based thereon [51]. Waskey, the former President of the Union, testified that he had asked Kelly, works manager, to rehire Fisher just in order to make the situation a little better for the Union and Kelly complied and said that Waskey would have to take care of him [615]. Waskey said that Fisher was a very difficult man to work with, but that he would try to teach him his job and put him by himself so that he would have no excuse to bother anybody [616].

In January, 1941, Fisher became a chairman of shop committeemen, and in July, 1941 was transferred to the Parts Plant, approximately one-half mile from the Home Plant. This plant had just commenced operations. There had been no requirement that committeemen obtain special permission from his foreman in order to leave a department at Plant One but had simply been required to notify the foreman's clerk. The controversy with refer-

ence to Fisher's disobedience of rules thereafter hangs upon two bulletins which were published by the manager of the Parts Plant subsequent to his transfer in July, 1941. On July 23, 1941 a bulletin was published by Mr. Newman, Parts Plant Factory Manager, which provided:

"23 July 1941

Memo to: Shop Personnel

Subject: Leaving the Department

With the exception of those men who have been duly designated by their foremen for contact work between the Home Plant and the Parts Plant, no one is permitted to leave their department without the permission of the Foreman in charge. Unauthorized departure or aimless wandering about the buildings of the Parts Plant will be cause for immediate dismissal.

G. J. NEWMAN (signed)

G. J. NEWMAN

Parts Plant Factory Manager."

[Respondent's Ex. 2, 363.]

On August 26, 1941, a further bulletin was published by Mr. Newman, which provided specifically:

"A great number of men are roving the shop during working hours. Some have legitimate reasons for doing so, while others are merely sight seeing. Bright red buttons are being issued to the foremen, who will see that each man leaving the department is supplied with one, and will return same when mission is completed. With the exception of the below named departments any man found out of his department without one of the 'roving' buttons will be sufficient cause for dismissal." [Respondent's Ex. 3, 369.]

Fisher was not an employee of any of the excepted departments. Fisher testified that he continued to follow the same procedure in the Parts Plant that he had at the Home Plant, regardless of the two notices above referred to, until he was notified personally to the contrary on December 13, 1942. He claimed that he had been informed by Powell, his foreman, and also by Newman, in substance, that these notices did not apply to him and he could continue as he had been doing in the Home Plant, to notify the foreman's clerk when he desired to leave on union business. There was no question but that it was necessary for Fisher to obtain a rover's button as a shop committeeman. He so admitted. The bulletin of August 26 with reference to the issuance of rovers' buttons applied to committeemen as well as to any one else who wanted to leave their department [Fisher, 406].

The requirement that permission to leave their department, and rovers' buttons, should be obtained for union shop committeemen as well as other employees was not an unreasonable requirement. The enormous Parts Plant, built at a cost of \$22,000,000, had just been opened and was being occupied by many departments. It should be understood in considering the Fisher case that the Company is engaged entirely in war production; that the plant is surrounded by high wire fences, guarded by Army sentries; that all officials and employees must be American citizens; that all are fingerprinted and carry identification photographs; and that each department has its distinctive large colored button with the number of the department, which must be worn by the employee at all times in order to obtain access to the plant, to remain in the plant, and in order to leave. These disciplinary regulations are abso-

lutely necessary in order to keep employees within their departments, prevent possible sabotage and permit the Company's production to continue in an orderly manner.

The agreement with the Union provided that the regulations set forth in the Company's rule book (made a part of the agreement) were necessary for the efficient operation of the Company's plant and that infraction of any rule constitutes cause for discharge or disciplinary action [Board's Ex. 3, 154]. The rule book provided "No employee is permitted to leave his department during working hours without the authority of his foreman" [Respondent's Ex. 7, 942].

No where is there any complaint made that the requirement that a union committeeman must obtain permission and a rover's button in order to leave his department on union business hampered or restricted the Union in its relations with its members or the employees of the plant.

The Company charged that Fisher procured rovers' buttons without obtaining the permission of his foreman. He had been peremptorily told by his foreman Mineah, early in December, that he could not leave the department without the foreman's permission, and indeed Fisher made the alleged profane language of the foreman on that subject the matter of a grievance [Board's Ex. 16, 354], in which he stated that the foreman swore at him, told him that he would have to stay on the job, and threatened him with discharge. Fisher said that he had had permission from Kelly, the manager of Plant One, to do as he pleased. Mineah swore about it, said Kelly was not running the Parts Plant and threatened Fisher's discharge if he left his department again without his permission [Board's Ex. 16, 354]. The trial examiner's finding that Fisher was

left with the impression that Mineah was later told not to interfere with Fisher's legitimate activities as a union shop committeeman is contradicted by Fisher himself, who testified that it was only with reference to putting Mineah on the "right track" as to profane language that Mineah was spoken to:

"Q. That Mr. Newman and Mr. Powell said that although Mr. Mineah told you you couldn't get out of your department without his consent, that they were going to tell him that you could go whenever you wanted to. Was that the idea of it? A. No, they were going to tell him in regards to the language he used and the way that he approached me and told it to me" [Fisher, 405].

In spite of this warning in early December, on December 13 Fisher made the occasion of the circulation of the petition with reference to working on Sunday, December 14, already discussed, the reason for visits to several departments in different buildings. He admitted that on this occasion he had no rover's button and had not obtained permission from his foreman. He claimed that as he went up the stairs in one department the quitting whistle had blown so that therefore he was on his own time [380].

It had been reported to Newman by foreman Stark of the wood-mill at 3:00 p.m. prior to quitting time, that Fisher was out of his department. Newman phoned Mineah, Fisher's foreman, asking if Fisher had his permission to leave, and when Mineah said he had not given permission, sent for Fisher to come to his office. Fisher admitted he did not have Mineah's permission to leave or a rover's button [838]. The Board has found on conflicting evidence that Newman called Fisher a "Jap lover,

a Hitlerite and a God damned communist.” Both agreed that Newman told Fisher he was on thin ice. Newman denied calling him names but told him that there was a war on and that he ought not to interfere with a patriotic petition to work on that Sunday [838]. The blackout on December 10, the petition of the employees themselves to be permitted to work to make up the lost hours and to paint the plant, the signatures of thousands of employees, signifying their desire to work on Sunday at time and one-half, the attitude of the Union with reference to possible picketing of the plant, all undoubtedly contributed to a justified irritation on the part of Mr. Newman to Fisher’s activities and disobedience.

On January 1, 1942, in spite of all previous warnings about obtaining permission from his foreman, Fisher obtained a rover’s button from his foreman’s clerk, a young boy who left the employ of the Company a few weeks thereafter. He told this clerk that Gahlbeck, his supervisor, had given him permission to leave, which was denied by Gahlbeck [681]. Fisher was in the middle of the adjoining building, allegedly investigating a complaint by the janitors, out of his department, when he met Newman and his two assistants, as Newman claimed, by accident. Fisher claimed that Newman pulled his rover’s button off his shirt, which was denied by Newman and his two assistants, and the trial examiner found by weight of testimony that Newman did not do so. Newman then asked Fisher if he had his foreman’s permission to leave and Fisher admitted that he had not.

Fisher admitted:

“Q. And at that time he (Newman) asked you whether you had had the permission of the foreman to leave your department and you said no? A. That is right. That was the only question he asked me. Nothing else” [390].

Newman then confirmed with Mineah, the foreman, and Gahlbeck, the supervisor, that Fisher was absent without permission of the foreman and thereupon ordered his discharge. There is nothing to indicate either Newman or Mineah had any animosity toward Fisher because of his union activities but only because of his repeated violation of rules. Indeed Mineah marked his record as available for rehire, but Newman refused to reinstate him. There is testimony of every foreman and leadman under whom Fisher worked that they believed he had made his Union activities a pretext for leaving his department. The testimony of Fisher shows he believed he could disregard all rules because of his position as chairman of the union shop committeemen, and that the explanation given by the Company showed that his discharge was justified.

Where the Board has found that both Williamson's and Fisher's discharges were not unfair labor practices, remarks at the time of their discharge or prior thereto cannot be made the basis of an unfair labor charge of interference.

POINT III.

The Company By the Statements of Treasurer Shanahan to Shannon Did Not Interfere With, Restrain or Coerce its Employees, as the Circumstances Show That Such Statements Were Fully Justified in Criticism of the Attempt of the Union in the Wage Review Board to Coerce Non-Union Men into Joining the Union in Violation of the Contract Providing That it Would Not Discriminate Against Non-Union Men. The Remarks to Condon Were Isolated and Trivial.

At the hearing the counsel for the Board contended that Shanahan interfered with the union activities of Joseph J. Blake, chairman of the union committeemen in the Home Plant, during the last half of 1941 and of Edward Barnes, also a union committeeman, but the trial examiner found that the record did not support these contentions and the Board agreed [116]. These charges were introduced obviously to attempt to show an anti-union pattern of conversations by Shanahan with union shop committeemen. This leaves only the statements alleged to have been made by Shanahan to Condon and Shannon to be examined. We feel confident that the record will show that no coercion or interference was attempted in the case of Condon and that whatever Shanahan said to Shannon was provoked by and justified by the attempted discrimination against non-union men in the wage review by Shannon pursuant to the policy of the Union of discrimination against non-union men as set forth in its official paper.

Condon was an employee in the payroll division of the accounting department who served only four days in April, 1942, as temporary union committeeman to fill a vacancy.

He took up one grievance with Shanahan, the treasurer and head of the department on April 28, 1942, about Hardman, another employee, who had asked to be transferred from the payroll department and who wanted to have his wages reviewed by the six months wage review board and receive an increase before he was transferred out of the department [Condon, 163]. Shanahan told him he had spoken to Hardman about it, and so far as he was concerned, the matter was closed, and, in substance, that if any more was done about it he would have Hardman terminated, and that anyone who tried to do anything about the case was liable to get in trouble [164]. This was the only time he ever spoke to Shanahan [160]. No grievance was ever filed by the Union. Hardman did not testify, and there is no evidence that Hardman belonged to the Union. He is still in the employ of the Company at the same pay [167].

Shanahan testified that Hardman was, by his own admission, an unsatisfactory timekeeper and was told that he must either seek a transfer or be terminated [730]; that if he wanted a transfer to another department, it was necessary to find a foreman who would accept the transfer; that a man who has been transferred is brought up before the wage review in the department in which he is acting at the time of the wage review [731]; that Hardman wanted his case considered as a special case, but that no exception could be made [731]; that Hardman's claim for special wage review prior to his transfer from the department, and prior to the scheduled time for his review as not within his power to grant [732] and that he so told Condon [732]; that if Hardman was granted a wage review before his transfer, the foreman would

undoubtedly refuse to accept it and they would be compelled, therefore, to terminate Hardman.

None of this explanation was contradicted. No more trivial complaint with reference to anti-union discrimination could be presented to set in motion the vast and expensive machinery of the National Labor Relations Board. This case was not even made the subject of a grievance by either Condon or Hardman or the Union.

How the suggestion that anyone who tried to do any more about the Hardman transfer would "get into trouble" could be carried out is not in the record. Certainly such a remark to a temporary committeeman who obviously didn't know the Company rules as to wage review on transfers could not be considered clothed with the dignity of an interference with the Union.

Shannon, the shop committeeman for Department No. 52 which comprised the timekeeping, accounting, and tabulating sections located at the company's Plant No. 2 in San Diego, testified on direct examination that he had several conversations with Shanahan concerning the Union, including one in April, 1942, in which Shanahan told him that he was sacrificing his chances for advancement [467]; that in May Shanahan brought out his list of men who were up for wage review and asked Shannon to sign the raises to save bickering and arguing in the wage review [467]; that Shanahan told him he had been accused of Union intimidation in cases of Barnes, Blake and one other, and asked Shannon if he had been intimidated, to which Shannon said "No" [467]; that in June Shanahan told him to keep out of the tabulating department, that he, Shanahan, could make trouble for him, and probably get him removed as committeeman [470]; that

Shanahan tried to get him to sign raises for two men, Mason and Kreutschamp [365, 366]; that Shanahan ordered him to sign the raises, told him he was the only committeeman who took these cases to the master board, and that he couldn't deal with Shannon and that Shannon's conscience ought to bother him [475].

The cross-examination of Shannon revealed clearly that Shannon was not only using his position to solicit men to join the Union on company time, but was using his position at the wage review board to discriminate against the non-union men whose names were presented by their foremen for advancement. He admitted that when he was furnished with a list of men by the Union several days before the wage review board [479] he went into the tabulating department to find out which were Union and which were non-union men and talked with them about their qualifications. When the foreman offered an increase for a non-union man Shannon agreed instantly [480].

Shannon testified:

“Q. You listen to me. I am asking you if in every instance where a non-union man was recommended for an interim wage increase by his foreman, that the union didn't accept it instantly? A. I did [480].

Q. And in the cases of union men who were recommended for a raise, say of 7¢, wasn't it your invariable custom to demand that they get a larger amount? A. I generally did try that, sure [480].

Q. When you contacted the non-union men in the department to see whether the work they were doing would justify a raise, did you suggest to them

that they might join the union? A. Yes, sir; I did [482].

Q. Can you state that there was no occasion when you contacted a non-union man in your department about an interim raise that you didn't tell him if he joined the union you would see that he got a bigger raise than that recommended? A. I always told them I would try.

Q. You always told them that you would try to get them a bigger raise than that recommended if they would join the union? A. I told them I would try to do the best I could do for them" [482].

Shannon admitted that Shanahan told him he had no business to contact these men to try to get them to join the Union [472].

"Q. Well, had you done so? A. All I did—all I did was I went in to find out which were union members and which were not and at the time I asked them if they cared to be a union member and have me represent them as a union member.

Q. And for what purpose did you ask them that? A. So I could represent them better" [472].

The fact that the witness immediately agreed to the suggested raise for non-union men and asked more for Union men than the raises recommended by the foreman usually resulted in a compromise at the wage review board so that union men got more in some instances for the same kind of work than the non-union men [485].

Shanahan testified that he had no such conversations with Shannon except the one about Kreutschamp. Shannon knew that rate change slips had to be signed by the permanent members of the wage review board in the

wage review room before such changes would be effective [469]. Therefore, any proposal on the part of Shanahan to hold a session of the board as inferred by Shannon [469] would certainly have been fruitless and no doubt would have resulted in a grievance being filed by the union members on the wage review board. No such grievance was ever filed.

Shanahan said that Shannon almost invariably did not agree to the raises suggested by him and demanded many cents an hour more than the amounts proposed. Kreutschamp and Mason were non-union men who had received an increase of only 7¢ an hour [719], as recommended by their foreman. The Union demanded that union men on the same list should receive increases of from 20¢ to 40¢ an hour. Union men performing the same duties, with the same experience, and the same ability were given from 7¢ to 11¢ an hour increase [719]. Shanahan asked Shannon to agree to an increase for Kreutschamp of 4¢ an hour in order to make Kreutschamp's increase comparable with the increases granted to union men. Shannon would not approve this increase until such time as similar increases were given to union men [720]. This, of course, would have resulted in preserving the inequality which Shanahan was trying to correct [720]. Shanahan told him that he could either approve the increase or he would send it to arbitration, and that his conduct in not approving an increase for a non-union man was contrary to the spirit of the agreement and the entire Act [721]. Shanahan testified that he never had any difficulties with the other five committeemen in his department and had only 10 cases out of 125 sent to the master wage board for settlement by other committee-

men [721]; that Shannon never made an honest attempt to suggest reasonable rates [722]. Shannon's reply was that he was instructed by the Union to ask for those wage increases [723].

Shannon's conduct would have justified his discharge for coercing and discriminating against non-union men and soliciting them to join the Union on company time in violation of the agreement.

That Shannon's instructions came from the Union, was undoubtedly true, as is proven by the extracts from the union paper in a column written by Perry, business agent, in the issue of March 27, 1942, when he wrote:

"This coming Wage Review will do such to equalize wage discrepancies if it is supported by a large, militant membership. Of course, the non-member doesn't expect much out of his Review, at least, it is my opinion that he had better not, so his disappointment will be less keen, for whether you know it or not, this is one time when the Company can't put anything over without the Union agreeing to it, and we'll see that we don't get pushed around too much!" [Resp. Ex. 8, 699.]

Again, in the issue of May 29, 1942, the business agent's report to the Union with reference to the operation of the wage review, stated:

"All of the foregoing are Union-Company proceedings so what happens to the non-union man's case as it goes through the hurdles? You said it! It takes a helluva beating, as well it should, and gets dunked every time we get a poke at it, before running it out on the scrap pile" [Resp. Ex. 9, 709].

In the very recent case of *Christoffel v. Wisconsin Employment Relations Board*, 10 N. W. (2d) 197, the Supreme Court of Wisconsin, in a proceeding under the Wisconsin Employment Peace Act, which guarantees employees the right to refrain from joining and assisting labor organizations, and in which the court upheld an order of the Wisconsin Board that the union cease and desist from continuously soliciting employees to join the union or to coerce and intimidate them to join the union, the court referred to the National Labor Relations Act and said:

“There is no such thing under the National Act as unfair labor practice by employees or any provision for investigation or determination of controversies between employees.”

The criticism by Shanahan of Shannon's activities because of his attempted discrimination toward non-union men was well within the right of free speech. (*National Labor Relations Board v. Citizen-News Co.*, 134 F. (2d) 962 (C. C. A. 9.)

The non-union employees were just as much entitled to be protected in all of their rights as were the union employees. (*National Labor Relations Board v. Sterling Electric Motors*, 109 F. (2d) 194 (C. C. A. 9.); *National Labor Relations Board v. Sterling Electric Motors*, 112 F. (2d) 63 (C. C. A. 9).)

That this discrimination against non-union was the settled policy of the Union is shown by the recent decision

of Mr. Robert Littler as an arbitrator between the Company and the Union in a recent arbitration under the contract. Mr. Littler, of the United States Conciliation Service, had been appointed by the War Labor Board in March, 1943 to sit as chairman of an arbitration board to hear 142 cases arising from the joint wage review boards. In his opinion handed down on these cases, he said:

“The ‘uncooperative’ cases. Numerically these are considerable; But they all involve a single and narrow issue. The company takes the position that these workers are entitled to merit increases of varying amounts. As to all of them the Union either requests that there be no increase or that the increase be somewhat less than that proposed by the Company. As to practically all the cases, the sole reason advanced by the Union in the preliminary proceedings and one of the principal reasons advanced in these proceedings, was stated in almost identical language: ‘We feel that this employee is uncooperative and does not help to increase production, which we are vitally interested in at the present time.’

“Although the Union does not avow it, the conclusion is inescapable that the true reason is that the employee has refused to join the Union, and therefore, the Union resists the increase. I appreciate the motive behind this stand; but I must deprecate the means adopted.”

POINT IV.

The Company by the Bulletin of Vice President Perelle Requiring Employees to Give Up Their Membership When They Were Promoted From Hourly Wage to Salary Did Not Interfere With, Restrain or Coerce Its Employees. The Letter of Wiseman to the Union With Reference to Pryor Proved Nothing.

In May, 1942, Vice President Perelle in charge of production, sent a memorandum to Renison, a supervisor, attaching a list of salaried employees who were part of supervision and paying dues to the Union, stating that this was contrary to Company policy and stating that if the employee did not desire to discontinue his affiliation with the Union he certainly should not be permitted to retain his present position but should be transferred back to a job commensurate with his ability and attitude concerning membership in the Union [Board's Ex. 10, 248]. The unit represented by the Union consisted only of hourly paid employees and excluded those on salary. In June, 1942, the Union filed a grievance protesting taking hourly paid employees within the jurisdiction of the Union and placing them on the administrative payroll at a salaried rate of pay, and particularly the action of foreman Stuart in the purchasing department in requesting such employees to write letters to the Union asking that they be removed from its rolls. The grievance requested the return of such employees to hourly rates [Board's Ex. 9, 243]. The Union was told that the action of Stuart had been taken pursuant to Perelle's memorandum. The record is silent as to whether and how the grievance was settled.

It was clearly Perelle's belief that supervisory employees upon salary were not included within the bargaining unit represented by the Union, and that it was inappropriate for foremen, assistant foremen and supervisors on salaries, who were considered to be a part of management, to belong to the Union, and that Union members who were promoted to such positions should not retain both their positions and Union membership. Whether or not Mr. Perelle's belief was correct in his interpretation of the agreement could only be determined by the filing of a grievance and settlement of the matter in arbitration.

Both the trial examiner and the Board found that the transfers were made from hourly paid rates to salaries without change in the job status of those involved, upon the testimony of Phillips [69, 115]. Any event such testimony of Phillips must necessarily have been only based on hearsay as he was not an employee of the Company and therefore not in a position to know the facts [see 242]. None of the employees mentioned in Mr. Perelle's memorandum were called as witnesses by the Union.

The evidence shows that an employee, Pryor, wrote to the Union that he had been promoted to assistant foreman and requested a withdrawal card. The union's representative told Pryor that he could drop his membership if he desired but that a withdrawal card could be issued only upon his becoming a general foreman. Wiseman, then Labor Relations Director, wrote the Union that he

knew of Pryor's letter and since Pryor was not within the classification covered by the contract, which covered only hourly paid employees, it would be appreciated if it was acted upon. There was no evidence whatsoever that the action of Pryor was instigated by the Company or that it was based upon anything except his own individual wish. It will be recalled that the agreement provided that the Company would recommend to employees that they join the Union and that the agreement provided for the check-off of dues. The trial examiner found that the Union took no action on this request of Pryor, who permitted his dues to become delinquent and was automatically dropped [69]. The action of Wiseman in writing to the Union in behalf of Pryon constituted no interference with the Union. Promotion to assistant foreman certainly placed the incumbent in a managerial position. The unit included only hourly paid employees and did not include foremen and assistant foremen on salaries.

The bulletin of Mr. Perelle, if it had been issued as to employees whose job status had not been changed and who had been transferred from an hourly to a salaried basis, could have been the subject of arbitration and the matter could have been determined whether his interpretation was correct.

POINT V.

In Order to Justify the Present Entry of an Order Directing the Company to Cease and Desist From Unfair Labor Practices There Must be Substantial Evidence as to a Course of Conduct and Pattern of Unfair Labor Practices in the Past From Which Reasonable Inferences Can be Drawn That Such Practices Are Likely to Continue in the Future.

Section 10(b) of the Act provides that whenever it is charged that any person has engaged in or is engaging in any such unfair labor practices the Board shall have power to issue and serve a complaint. Subdivision (c) provides that if upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board may issue a cease and desist order. Under this provision of the Act there have been some decisions to the effect that the Board is empowered therefore to issue such an order in a case in which a person has engaged in and voluntarily ceased unfair practices. (*National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 600, 61 S. Ct. 358, 85 L. ed. 368; *National Labor Relations Board v. Burke Machine Tool Co.*, 133 F. (2d) 618 (C. C. A. 6); *Cleveland Cliffs Iron Co. v. National Labor Relations Board*, 133 F. (2d) 295.

In *Burke* case the court overruled the company's argument that the court should be governed by the usual rules of equitable injunction, and held in substance that the provisions of the Act above quoted broadened the rule with reference to equitable injunctions as to the absence of threatened or intended repetition of the acts complained

of. In *Cleveland Cliffs Iron* case it should be pointed out that the order was appropriate because although the company had ceased to operate the lumber camps at which unfair labor practices occurred, the order called for the reinstatement of employees to those camps in case operations should be renewed.

The alleged unilateral acts of the Company in this case, which were found by the Board to have constituted interference with the rights of the employees, were all voluntarily settled by agreement with the Union, except two, *viz.*, the third shift and the question of job classifications and wages pertinent thereto. The issue as to the third shift could have been taken to arbitration. The issue as to job classifications is not open to collective bargaining under the jurisdiction of the National Labor Relations Board because it has been transferred to and acted upon by the National War Labor Board. That matter has become academic.

The Board's decision in this case states:

"We are not, however, convinced that this series of unilateral decisions by the respondent was a part of a conscious campaign on its part to undermine the authority and prestige of the Union as the collective bargaining representative of the respondent's employees or to evade the respondent's obligation to recognize and deal with the Union as such representative. This, we think, is demonstrated by the respondent's willingness to bargain with the Union as to these matters after the Union had objected to the action taken by the respondent and also by the fact that all but two of the issues thus raised were in fact amicably settled as a result of this collective bargaining between the parties after the event" [109].

The decision clearly recognizes the willingness of the Company to negotiate with the Union and that any matters in dispute could have been and can be in the future settled by arbitration.

The discharge of Williamson was amicably settled by his reinstatement, which should be sufficient to take from the record any statements made to Williamson at the time of his discharge or to justify an inference that such an occasion is likely to be repeated. The rest of the statement relied upon as interference with the rights of the employees do not show any pattern of hostility to the Union. In a period lasting several years in its relations with its many, many thousands of employees only these few trivial isolated instances, disputed by the Company, have been found by the Board to have constituted interference or coercion of its employees. Any order issued by the Board speaks as of the present and will operate in the future with reference to the future and should not involve the Company in contempt proceedings because of possible casual statements by foremen or supervisory personnel.

In *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 85 L. ed. 930, 61 S. Ct. 693 (1941), no agreement between the employer and employees had been reached and the employer had refused to enter into an agreement. The court found that the employer has failed in only one respect to comply with the Act, *viz.*, failure to bargain with the Union in order to arrive at an agreement.

Nevertheless, the Board had issued a sweeping cease and desist order as to all violations of the Act in the

future by the company. This order had been modified by the court below. The Supreme Court confirmed the order of the court below and confined the cease and desist order to the only one subject before the Board, and said (312 U. S. 436):

“It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. But we think that, without sacrifice of that principle, the National Labor Relations Act does not contemplate that an employer who has unlawfully refused to bargain with his employees shall for the indefinite future, conduct his labor relations at the peril of a summons for contempt on the Board’s allegation, for example, that he has discriminated against a labor union in the discharge of an employee, or because his supervisory employees have advised other employees not to join a union. See e. g. *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514.”

* * * * *

“We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found. To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past. That justification is lacking here. To require it is no more onerous or embarrassing to the Board than to a court.”

This rule was followed recently in *National Labor Relations Board v. Newark Morning Ledger* (C. C. A. 3, 1941), 120 F. (2d) 262, 269, where the court confined the Board's order, which had been sweeping in its terms, to the reinstatement of one employee, and said:

“* * * It is, however, now settled in that in absence of a finding that the unfair labor practices actually engaged in by an employer have been so persistent and varied as to justify the apprehension of continued similar and varied efforts in the future to interfere with the employees' right of self-organization and collective bargaining, the entry of a blanket order to cease and desist from all violations of the Act is not justified * * *.”

Both of those cases apply to one specific violation of the Act. The principle is equally applicable where the evidence shows that issues in dispute in the past have been settled. In this case there is no evidence whatsoever which would justify the Board in finding that unfair labor practices have been so persistent and varied as to justify the apprehension of continued similar and varied efforts in the future.

POINT VI.

A Cease and Desist Order Is Unjustified Upon the Record.

Section 7 of the Act gives the employees the right of self-organization, to join or assist labor organizations, to bargain collectively and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection.

The Board finds as a fact that

“the respondent has not engaged in unfair labor practices within the meaning of 8(3) of the Act as alleged in the complaint [118]. Section 8(3) of the Act prohibits discrimination in regard to hire or tenure of employment on any term or condition of employment, to encourage or discourage membership in any labor organization. The Board has also found that the respondent ‘has not engaged in unfair labor practices within the meaning of Section 8(5) of the Act as alleged in the complaint herein’ ” [118].

Section 8(5) of the Act provides that it shall be unfair labor practice

“to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(2).”

In view of the foregoing findings, the finding that the Company has violated the provisions of Section 7 of the Act is untenable and inconsistent. A violation of Section 8(5) of the Act is also a violation of Section 8(1), which in terms incorporates by reference all of the rights enumerated in Section 7, but the entire purpose of Section 7 is to permit the right of self-organization, to join

labor organizations and to engage in concerted activities for the purposes of collective bargaining.

In this whole record there can be found none of the usual acts indicating interference, restraint and coercion in violation of Section 8(1) of the Act, such as discharges of employees, threats of discharge, demotions or transfers, interference with wages, decreases in wages, bribes or gratuities, threats of physical violence, advice not to form a union or join a union, advice not to enter into a collective bargaining agreement, solicitation for a company union, espionage and surveillance of employees or interference with elections.

Most of the cases involving hostile expressions before the Board referred to organizers of a union, while it was in the process of organization. In this case the agreement had been made in which the Company agreed to recommend to its employees that they join the Union.

The honest expression of opinion is not condemned by the Act, where these expressions do not interfere with employees rights. There is no evidence in this case that any of the acts or conversations interfered with any of the employees rights. In *National Labor Relations Board v. Union Pacific Stages*, 99 F. (2d) 153, 179 (C. C. A. 9th), this court held that the statement of the president that if he had a son he would advise him against belonging to the Union, stating upon cross-examination that he thought if a young man worked diligently, conducted himself properly and tried to advance the interests of his employer he would fare better and get further than if he depended upon the Union for assistance, was not violative of the Act, and that the right of workers to organize was not destroyed by expressions of opinion by the em-

ployer or employee, such as referred to above; that the case was different where the employer made use of threats to prevent organization, circumstances entirely absent in the case at bar.

The isolated expressions, justified in the case of Liegal's calling Williamson an agitator, and Newman's statements to Fisher, and Shanahan's to Condon and Shannan, leave as acts of interference only the Pryor case, which amounted to nothing, and the Perelle memorandum, which, whether right or wrong in its interpretation of the agreement, as an isolated act does not justify the issuance of a broad cease and desist order.

POINT VII.

The Order of the Board Shall be Vacated and Set Aside and its Enforcement Denied.

It was conceded by counsel for the Union in the argument before the Board that this was an unusual case and that he was not familiar with another case with exactly the same points involved.

The record shows an earnest desire on the part of the Company to abide by the National Labor Relations Act and to negotiate with the Union with reference to any grievances that are presented. It has, however, maintained its own position with reference to certain phases of the union agreement which could have been taken to arbitration by the Union. Isolated remarks to its employees by various Company employees have not been shown to discourage the employees from collective bargaining for they have already done so and an agreement has been made in which the Union is recognized as the

representative of all employees and the Company has recommended in the agreement that employees join the Union, at the same time safe-guarding the rights of non-union employees by a provision that they will not be discriminated against by the Union. Under all of the circumstances in this case we are confident that Congress never intended that the acts and conversations shown in the record should be regarded as interference with, restraint or coercion of the Company's employees.

Respectfully submitted,

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No. 10389

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

CONSOLIDATED AIRCRAFT CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

**ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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FILED

SEP 27 1943

PAUL P. O'BRIEN,
CLERK

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**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 10389

CONSOLIDATED AIRCRAFT CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*ON PETITION TO REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of Consolidated Aircraft Corporation to review and set aside an order issued against it by the National Labor Relations Board pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*), herein called the Act. In its answer to the petition the Board has requested enforcement of its order. Petitioner, a Delaware corporation, has its principal office and manufacturing plant at San Diego, California, within this judicial circuit, where

the unfair labor practices occurred. The jurisdiction of this Court is based upon Section 10 (e) and (f) of the Act.

STATEMENT OF THE CASE

Following the usual proceedings, which are set forth in the Board's decision (R. 90-93), the Board, on February 18, 1943, issued its findings of fact, conclusions of law, and order (R. 89-120) which may be briefly summarized as follows:

1. *Nature of petitioner's operations.*—Petitioner is engaged in the manufacture of aircraft, aircraft parts, and accessories at its San Diego, California, plant. During 1941 it purchased materials and supplies valued in excess of \$5,000,000, more than one-half of which were shipped to it from points outside California, and sold finished products valued in excess of \$95,000,000, substantially all of which it delivered to points outside that State (R. 94).¹

2. *The unfair labor practices.*—By repeated unilateral action in respect to wages, hours, and working conditions in disregard of and without notice to or consultation with the Union,² the duly authorized representative of its employees, and by threats, warnings, and hostile restrictions on Union membership and activity, petitioner has interfered with, restrained,

¹ At the hearing these facts were stipulated and petitioner conceded that it was engaged in commerce within the meaning of the Act (R. 143-144).

² International Association of Machinists, Aircraft Lodge #1125, affiliated with the American Federation of Labor at the time the unfair labor practices occurred.

and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (1) of the Act (R. 117).

3. *The Board's order.*—The order requires petitioner to cease and desist from its unfair labor practices and to post appropriate notices (R. 119).

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found petitioner has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

II. The Board's order is valid and proper.

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found petitioner has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

Following an election in which it was successful, the Union was certified by the Board on August 3, 1938, as the exclusive representative of petitioner's hourly rated employees, excluding timekeepers and superintendent's clerks.³ On June 12, 1941, petitioner and the Union entered into a collective labor agreement which, as amended, was in force when the unfair labor

³ *Matter of Consolidated Aircraft Corporation*, 8 N. L. R. B. 205. Petitioner does not contest the Union's continued majority status, and no question is presented as to the validity of the certification.

practices occurred.⁴ Notwithstanding the Union's representative status and the existence of the contract, petitioner has repeatedly interfered with its employees' exercise of their "continuous right to maintain labor organizations for the purpose of collective bargaining" which the Act secures to them "after the signing of a particular collective bargaining agreement as well as before." (*N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. (2d) 262, 267 (C. C. A. 3)). Petitioner's interference, which the Board found to constitute violation of Section 8 (1) of the Act, was of two general types. In the first place, petitioner repeatedly, without prior notice to or consultation with the Union, took unilateral action with respect to conditions of employment which were appropriate subjects of collective bargaining. Secondly, petitioner has imposed unwarranted restrictions upon Union membership and activity and upon employees' performance of their duties as Union committeemen.

A. Petitioner's interference with employees' rights under the Act by unilateral disposition of matters which were appropriate subjects of collective bargaining

1. *Petitioner's suspension and resumption of interim individual wage increases.*—The contract of June 12, 1941, provided that general wage reviews should be conducted in April and October of each year by joint committees representing both petitioner and the Union, and that during the periods between general wage reviews, petitioner would approve individual merit wage

⁴ The contract is for the term of 2 years or for the period of the national emergency proclaimed by the President. It was amended on October 18, 1941, and March 5, 1942 (R. 159-160).

increases in accordance with its past practice and after consultation with the foreman and the union committeemen involved (R. 149-150). On November 11, 1941, while these contractual provisions were in effect, and without any notice to or consultation with the Union, Works Manager I. M. Laddon announced to all petitioner's department heads that there would be no individual increases in the period between the October 1941 wage review, then in progress, and the next general wage review which was to take place in April 1942 (R. 459-461, 464). After the Union protested, petitioner announced the resumption of the practice of granting interim individual increases (R. 221-222, 288-289, 452, 461). Even then, however, petitioner persisted in treating the grant of increases as if it lay in its sole uncontrolled discretion, notwithstanding past practice and the contractual requirement of previous consultation. Thus, in the spring of 1942 petitioner put into effect several hundred such increases without consultation with the union committeemen concerned, although the contract provided that increases should be granted only after such consultation (R. 222-223, 229-230, 797). The Union twice objected to this practice without success (R. 219-220, 223, 230). Finally petitioner agreed to resume consultation with the union committeemen before granting increases (R. 228, 230, 253-255, 527), but as to the many increases given in disregard of the Union "the damage was done," as the Union representatives recognized (R. 230, 527, 543-544), for the Union was thereby discredited in the eyes of the employees who had been granted increases without its help.

When petitioner abruptly terminated the interim wage procedure provided by its contract without consulting the other party to that contract, it plainly interfered with its employees in their right to have their representative acknowledged after, as well as before, the execution of the contract. Yet petitioner, after agreeing to abide by the contract's provisions and reinstate the practice of reviewing individual wages between the general reviews, nevertheless put these increases into effect without ever approaching the union committeemen, although the contract specifically provided that they be consulted before such action should be taken (*supra*, pp. 4-5). When the Union protested this second disregard of its status as representative of the employees, the Company offered to retract the increases (R. 230, 526). Such action would only have served to emphasize the undermining of the Union's prestige already accomplished when the increases were announced to their recipients without prior consultation with the committeemen (R. 230, 543-544). This entire incident clearly constituted interference with Consolidated's employees in their right to be dealt with through their designated representative.

Petitioner's suspension and subsequent resumption of interim wage increases without previous notice to or consultation with the Union marked the beginning of a series of incidents in which petitioner acted unilaterally upon matters of general concern to its employees in disregard of their representative. We shall discuss these *seriatim*.

2. *The petitions and the notice of December 13, 1941.*—The contract of June 12, 1941, provided for double-time payment for work on the seventh consecutive day (R. 430). San Diego was blacked out on the night of December 10, 1941, and the night shift lost some time (R. 654, 835). Certain night shift employees signed a petition on December 11, volunteering to do daytime work painting out the plant skylights and reflecting surfaces so that work might continue without further loss of man hours in any future blackouts (R. 788-795). On Saturday, December 13, petitioner posted notices which, after accepting the volunteers' offer to paint, went on to state that "other employees who signify in writing that they desire to work Sunday at time and one-half will ring their time cards and be paid accordingly" (R. 339).⁵ Since the

⁵ The whole notice was as follows:

NOTICE TO ALL EMPLOYEES

In line with President Roosevelt's desire for a 7 day week, those employees who volunteered to work Sunday without pay may do so. Those men are not to ring their time cards. Other employees who signify in writing that they desire to work Sunday at time and one-half will ring their time cards and be paid accordingly. The above applies to certain jobs in Jigs and Fixtures, Tool Room, Machine Shop, Fuselage, Paint Shop, Sheet Metal, Welding, and blackout painting. No other departments will work.

The reference to "President Roosevelt's desire for a 7-day week," unexplained in the record, evidently relates to the President's speech of December 9, 1941, in which he recommended "working on a 7-day-week basis in every war industry." *New York Times*, December 10, 1941, p. 4. It is clear that the 7-day week mentioned referred to maximum use of plant facilities, rather than to the workweek of employees. See the statement of

employees to whom the notice was addressed were regularly working a 6-day week from Monday through Saturday, the Sunday referred to was the seventh consecutive day of work, for which the contract required double pay (R. 430). Petitioner's notice was obviously a direct appeal to the employees to forego their rights under the contract and consent to a waiver or modification of its provisions. On the same day, in response to petitioner's invitation, petitions bearing the language "In view of the present war situation we, the undersigned, offer to work this Sunday at time and a half" appeared and, with petitioner's assistance, were circulated among employees on both the day and night shifts (R. 417-418, 553). Thus, although the petition of December 11 concerning black-out painting by night shift workers may have been spontaneous,⁶ petitioner did more than accept the proffered assistance; it solicited other employees to perform their regular work on the seventh consecutive day at a wage less than that previously fixed by collective bargaining. Petitioner's direct dealing with

William S. Knudsen, then Director General of the Office of Production Management, *New York Times*, December 11, 1941, p. 1, col. 4. The Executive Order of October 1, 1942, states that "the continuous operation of plants and machines in prosecuting the war does not require that employees should work seven consecutive days," and provides that "where because of emergency conditions an employee is required to work for seven consecutive days in any regularly scheduled workweek a premium wage of double time compensation shall be paid for work on the seventh day." 11 L. R. R. 34, 7 Federal Register 7159, 7160.

⁶ Cf. *N. L. R. B. v. Medo Photo Supply Corp.*, 135 F. (2d) 279, 281 (C. C. A. 2).

the employees in disregard of their representative was in violation of the Act.⁷

When Foremen Stark and Watt informed Manager Newman of the parts plant that Fisher, union committeeman in that plant, was advising employees not to sign the December 13 petitions, Newman asked Fisher whether he was a "slant-eyed Jap lover, a Hitlerite, or a God-damned Communist," and warned him that he was "treading on thin ice" and that at "the first of the year" he would be "all done" (R. 342, 383, 836-838).⁸

The employees who worked on Sunday, December 14, were subsequently paid at the contract rate, but only after petitioner had first rejected the Union's request for compliance with the contract and characterized union representatives as disloyal, "unpatriotic," and "un-American" for opposing petitioner's arbitrary action (R. 462, 497-500, 502-505, 553).

Petitioner admits that it acted unilaterally and seeks to excuse its conduct by reference to the war emer-

⁷ *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 353; *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681 (C. C. A. 9); *N. L. R. B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9); *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2); *N. L. R. B. v. Martin Bros. Box Co.*, 130 F. (2d) 202, 204 (C. C. A. 7), and cases cited therein; *N. L. R. B. v. Superior Tanning Co.*, 117 F. (2d) 881, 885-888 (C. C. A. 7); *N. L. R. B. v. Acme Air Appliance Co.*, 117 F. (2d) 417, 420 (C. C. A. 2).

⁸ Fisher was in fact discharged on January 1, 1942. His discharge was alleged as an unfair labor practice in the complaint, but the Board in its discretion dismissed this allegation of the complaint without prejudice because the discharge had not been submitted to arbitration under the union contract (R. 112).

gency. But the contract of June 12, 1941, negotiated when war was within the contemplation of the parties,⁹ recognized the possibility of seventh day work and fixed the rate at which employees should be paid for it (R. 152). So far as appears in the record there was nothing in the emergency which required the abandonment of petitioner's established wage standards. In any event, the emergency certainly did not require petitioner to circumvent the Union by direct appeal to the employees.

3. *The third shift.*—The contract of June 12, 1941, provided that the work week should consist of 40 hours of 5 consecutive days from Monday through Friday (R. 151). Time and one-half was to be paid for 8 hours of Saturday work and double time thereafter (R. 152). In March 1942 petitioner instituted a third working shift after conferences with the Union had established that third-shift workers would receive the 8-cent hourly differential payable to second-shift employees and in addition would be paid 8 hours pay for 6½ actual working hours (R. 549). During the conferences nothing was said concerning the days of the week to be worked by the third shift, which in the absence of amendment to the contract, should work the regular week of 5 consecutive days from Monday through Friday, with Saturday and Sunday to be paid at time and one-half and double time, respectively, if worked (R. 151–152, 234–235,

⁹ See Section 22 on military service of employees (R. 157–158), and Section 25, by which the contract is to run for the period of the unlimited national emergency (R. 159).

549). On March 9, however, petitioner issued an order, without notice to the Union, establishing the third shift to run from midnight Monday to 7 o'clock Sunday morning (R. 606, 808). In consequence of petitioner's unilateral promulgation of the third shift work week different from that established by the contract, the parties have since had a controversy, which is as yet unresolved, over the rate of pay for that portion of the third shift work week which falls on Sunday (R. 235-237, 267-268, 512-519).

4. *The job classifications.*—The contract amendment of March 5, 1942, provided for reviews, by committees representing both petitioner and the Union, of the wages of all employees after 6 months' service (R. 149, 160). When the wage rates of individuals were subsequently discussed by these joint committees, petitioner's representatives repeatedly refused to consider increases for particular employees on the ground that they were already receiving the maximum rates for their particular jobs under a schedule of job classifications which petitioner had unilaterally established for the "guidance" of its representatives and to serve as a "yardstick" to govern rates of pay (R. 237-238, 304, 320, 797-798). When the Union asked to negotiate about these classifications, petitioner's labor relations director refused to do so (R. 237-238, 241, 304-309). The Union repeated its request by letter on May 1, 1942, but petitioner made no reply (R. 520-523), and it even refused to disclose to the Union the job classification schedule upon which petitioner's representatives continued to rely in wage review nego-

tiations (R. 240-241, 308-309).¹⁰ Although this job classification scheme has imposed a real limitation on the functioning of the wage reviews provided by the contract, petitioner has persisted in subjecting the employees to its sole determination on this important matter affecting their jobs and earnings (R. 241).

Petitioner asserts by way of justification for its establishment and use of the job classification schedule that it merely adopted a schedule uniform to the Southern California aircraft industry (R. 797-798, 803). That is obviously no answer, for regardless of the desirability of uniformity, nothing would have prevented petitioner from disclosing it to and discussing it with the Union before its adoption, or from discussing its application thereafter; at least two other aircraft manufacturers who adhered to the schedule discussed it with their employees' representatives before adopting it (R. 806-808).¹¹

Petitioner also contends that the whole matter of job classifications in the California aircraft industry has now been removed from the area of collective bargaining and referred to the National War Labor

¹⁰ The employer's refusal to disclose upon request the job information necessary for wage negotiation is a breach of the duty to bargain (*Aluminum Ore Co. v. N. L. R. B.*, 131 F. (2d) 485, 487, (C. C. A. 7)) and hence is a violation of Section 8 (1) (*N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 433).

¹¹ "In the California airframe industry, since the summer of 1941, there has been some collective bargaining between management and workers * * * on the subject of job classification * * *"
Matter of West Coast Airframe Companies, et al., National War Labor Board Cases Nos. 174 et al., decided March 3, 1943, p. 4 of pamphlet opinion.

Board for determination (R. 85-86). Even if that were true, it would not excuse petitioner's unilateral action at a time when job classifications were subject to collective bargaining. But the fact is that the procedures of the National War Labor Board do not supersede the right of collective bargaining¹² and that, in dealing with aircraft industry job classifications, that Board has made due provision for continued collective bargaining. *Matter of West Coast Airframe Companies, et al.*, National War Labor Board Cases Nos. 174, et al., March 3, 1943.¹³

Petitioner further contends that the National War Labor Board has, subsequent to the hearing in the instant case, given exclusive jurisdiction over job classifications and wage schedules in this industry to the West Coast Aircraft Committee, thus depriving the Board of jurisdiction in this matter. These contentions rest on a mistaken concept of the gravamen of the violation which the Board has found and the repeti-

¹² Section 7 of the Executive Order of January 12, 1942, under which the National War Labor Board functioned during the period in question, provided that "Nothing herein shall be construed as superseding or in conflict with the provisions of * * * the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 457; U. S. Code 151 *et seq.*) * * *" 7 Federal Register 238, 9 L. R. R. 536.

¹³ The opinion in the above case states that in directing the establishment of a job classification schedule, "realizing that [it] is no more than a broad initial step toward rationalization and stabilization of the wage structure in these plants [including petitioner's] and further realizing that any job classification system is properly subject to reasonable modification by collective bargaining in the light of experience, particularly in a rapidly expanding industry, the [National War Labor] Board has allowed for such collective bargaining * * *," p. 4 of pamphlet opinion.

tion of which it seeks to prevent. It is not contested that petitioner was fully entitled to take and maintain forcefully its position on these issues. It is submitted, however, that petitioner, by imposing its position unilaterally without prior consultation with, or even information to, the Union with regard to these numerous matters in which the Union had been designated to represent the employees, has consistently disparaged their representative in the eyes of those employees. Thus petitioner has prevented them from being truly represented for collective dealings, despite its lip service to such representation by signing the contract.

The Board does not require in its order that petitioner take any specific action as to any of these episodes. However, it does find that petitioner has repeatedly interfered with, restrained, and coerced its employees in the full representation by their certified representative to which they were entitled. It is a continuation or repetition of that course of conduct which the Board's order is designed to prohibit.

5. *The employees hired outside California.*—Because of the labor shortage in the area of its operations, petitioner hired a number of employees outside the State of California at agreed rates and job classifications. Upon their arrival in San Diego, petitioner reduced the wages or job classifications of 21 or 22 of them without previous notice to or consultation with the Union which represented them (R. 286-287, 321-322, 797). When the Union sought to take up these cases as grievances, Labor Relations Director Wiseman refused to take any action on them (R. 289-290). It was not until after intervention by a Department

of Labor Conciliator that petitioner reconsidered its action and made a compromise adjustment of these cases (R. 291-304, 803-804).

6. *The crane operators.*—The contract between petitioner and the Union does not contain a complete wage scale. In its original form the contract fixed only a minimum hiring wage of 60 cents an hour, to rise automatically to 75 cents after the twelfth week of service (R. 427-428). During the April 1941 wage review, a minimum rate of 75 cents was established for crane operators (R. 231). Thereafter, two general wage increases were negotiated, one of 5 cents effective May 3, 1941, and another of 13 cents, retroactive to August 9, 1941 (R. 231, 429). According to the Union's contention, these increases should have brought the crane operators' minimum up to 93 cents, but petitioner continued to hire crane operators and transfer others to that work at less than the 93-cent rate. When union representatives sought at a conference early in February 1942 to adjust the pay of newly hired and transferred crane operators upward to equal that of the others, petitioner's representatives insisted on the 60 to 75 cent minimum of the contract and took the position that they would not agree to any base rate of pay for crane operators (R. 232-234). When the Union wrote Wiseman on February 21, asking him to name arbitrators to resolve this controversy in accordance with contract procedure, he did not reply (R. 454-455). Subsequently, when the Union repeated its request, Wiseman replied that petitioner had nothing to arbitrate and that the management regarded the matter as entirely irrelevant

and was not going to consider it (R. 455-456). Later, after a Department of Labor Conciliator intervened, the wage rates of the individual crane operators then involved were adjusted, but it does not appear that petitioner has receded from its determination not to agree to any base rate for crane operators (R. 233, 263, 456-457).

B. Conclusions as to petitioner's interference by unilateral action

That petitioner's conduct in all these instances constituted interference, restraint, and coercion of its employees in their right to bargain collectively through representatives of their own choosing, and thus constituted a violation of Section 8 (1) of the Act, becomes clear upon examination of the customary contractual relationship between an employer and a union designated by its employees. It is therefore useful briefly to consider this relationship

The signing of a collective agreement is but a preliminary move in the direction of industrial peace. "The written contract is a general constitution upon which a body of industrial law is built."¹⁴ Its provisions are elaborated and changed by the settlement of grievances and of controversies concerning its interpretation whereby a body of industrial common law is evolved. Thus, a contract is only the first step in the bargaining process. It cannot possibly dispose with finality of all matters relating to wages, hours, and working conditions which may give rise to work

¹⁴ Golden, Clinton S., and Harold J. Rutenberg, *The Dynamics of Industrial Democracy*. New York and London [1942], pp. 43, 82-118.

stoppages. After its signing the employer must continue to deal in good faith with the established representative in order to maintain peaceful industrial relations. If he fails in this duty, the signing of a contract becomes merely a device whereby employees who have designated their agent for dealing in issues arising out of the employment relationship are in fact deprived of such representation. "The attempt to undermine the new unions often continues even after employers have signed agreements with them."¹⁵ The very nature of the aviation industry prevents the incorporation into the contract of all possible points of controversy. As a complex, new, and rapidly expanding industry, it is not one in which bargaining procedures are established. Accordingly, the industrial "common law" which grows up through the handling of grievances and the interpretation of contracts is not stabilized but is still in the making. Even job classifications and wage scales are elastic in this industry.¹⁶ This is apparent from the provisions of the instant contract for general wage reviews by joint committees and interim wage reviews after joint consultation (*supra*, pp. 4-5). These provisions of necessity look to post-contract bargaining between the Company and the Union.

¹⁵ Slichter, Sumner H., *Labor Aspects of the National Recovery Administration*, in *Current Economic Policies* (ed. by Joseph B. Hubbard), 1934, pp. 344-345.

¹⁶ "One of the union's chief aims in this industry has been to reduce the number of job classifications and to equalize rates for the same work." The Twentieth Century Fund. *How Collective Bargaining Works*. New York [1942], pp. 930-931.

By reason of these circumstances, employees, in selecting a union as their representative, designate it as their agent not only to negotiate and execute a contract, but also to represent them in interpreting and carrying out that contract. The Supreme Court has recognized that even after a contract has been entered into "the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning" (*N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 332, 342). Nor is there anything in the Act "to indicate that its framers intended that its force should be expended after it had once operated to cause an employer to bargain collectively with his employees," and, had Congress intended that the duty to bargain collectively should be limited to the term of the contract, "it would have so provided in clear and specific terms" (*N. L. R. B. v. Highland Shoe, Inc.*, 119 F. (2d) 218, 222 (C. C. A. 1)).

Unrest and stoppages frequently result from circumvention of the employees' agent by an employer who, overlooking the fact that "in a free society the desire of individuals to participate in the things that are important to them is an inviolate principle of human relations," unilaterally disposes of matters within the scope of the Union's agency.¹⁷

¹⁷ Golden and Ruttenberg, *op. cit.*, p. 82.

"* * * This practice on the part of employers of refusing to recognize their workers as collective units whether organized or not, and of simply posting notices of changed conditions without

This Court and others have frequently held employers to have violated the Act by disposing unilaterally of issues within the sphere of those activities in which Section 9 (a) entitles their employees to participate through their representatives.¹⁸ It cannot be questioned that the matters here involved fall within that sphere.¹⁹

Petitioner seeks to justify its unilateral action in all these matters on the ground that: "The Company had entered into a bargaining agreement. The management was justified in taking a position as to the interpretation of the agreement, and in announcing its po-

previous efforts at negotiation or parley, and then showing surprise and grief when a strike occurs, is one of the most insincere exhibitions in modern industrial relations. And it is very common. It suggests either that the employers have no concern for their own interest and no understanding of the importance of worker morale or that they are convinced in advance that nothing can be gained by treating human beings as such. In these circumstances a strike may be a mistake from an economic point of view but on another plane it is the only dignified thing to do." Ware, Norman J., *Labor in Modern Industrial Society*. Boston, 1935. p. 115.

¹⁸ *N. L. R. B. v. Grower-Shipper Vegetables Ass'n*, 122 F. (2d) 368, 377, (C. C. A. 9); *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681, 688 (C. C. A. 1); *N. L. R. B. v. George P. Pilling & Son Co.*, 119 F. (2d) 32, 36 (C. C. A. 3); *Great Southern Trucking Co. v. N. L. R. B.*, 127 F. (2d) 180, 186 (C. C. A. 4); *N. L. R. B. v. Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5); *N. L. R. B. v. Boss Mfg. Co.*, 118 F. (2d) 187, 189 (C. C. A. 7); *Inland Lime & Stone Co. v. N. L. R. B.*, 119 F. (2d) 20, 22 (C. C. A. 7); *N. L. R. B. v. Jahn & Ollier Engraving Co.*, 123 F. (2d) 589, 593 (C. C. A. 7); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 458 (C. C. A. 7), cert. denied 317 U. S. 650.

¹⁹ Cf. *Singer Mfg. Co. v. N. L. R. B.*, 119 F. (2d) 131, 137 (C. C. A. 7); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 459 (C. C. A. 7), cert. denied 317 U. S. 650; *Wilson & Co. v. N. L. R. B.*, 115 F. (2d) 759, 764 (C. C. A. 8).

sition and in maintaining it in negotiations. The Union could have taken the issue to arbitration but failed to do so." (Brief, p. 30.) The Board agrees that petitioner was entitled to take and maintain vigorously its position on any matter of interpretation of the contract. Its unfair labor practices lay in its failure to discuss its interpretation with the Union, or even to inform the Union of that interpretation before it put into effect its own interpretation of each of these controversial matters by unilateral action. It is this conduct which is the crux of the Board's finding of unfair labor practices and which its order seeks to prevent in the future.

The Board could have concluded that petitioner, by the unilateral acts set forth *supra*, had refused to bargain collectively with the Union within the meaning of Section 8 (5) as the complaint among other things alleged. The Board noted, however, that all but two of the points in dispute between the parties had been in some fashion adjusted and that the Union had not taken steps to submit the remaining two to arbitration under the contract. Although neither the contract as a whole nor its arbitration provisions in any way limited the Board's exclusive jurisdiction over unfair labor practices or its power to grant effective relief,²⁰ the Board took cognizance of the contract procedure for settlement of disputes in determining whether to exercise to the full the jurisdiction which it clearly possessed. Under the circumstances disclosed, the Board

²⁰ Section 10 (a) (29 U. S. C., Sec. 160 (a)); *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. (2d) 262, 268 (C. C. A. 3).

in its discretion declined to find whether petitioner's whole course of conduct was a refusal to bargain and to make the bargaining order normally predicated upon a finding of such refusal. Accordingly, the Board dismissed the complaint without prejudice insofar as it alleged a refusal to bargain within the meaning of Section 8 (5). The Board could not, however, overlook petitioner's repeated acts of interference with the bargaining process in derogation of the employees' right to deal through their representative. The Board's finding thus extends only to the specific and repeated acts of interference which have prevented the bargaining process and the collective labor agreement from fully achieving their objective of industrial peace. That those acts constitute interference is rendered nonetheless so because the Union has been able, by resort to grievance procedure and mediation, to regain some of the working conditions which petitioner's unilateral action impaired, or because submission of the remaining matters to arbitration might have secured their correction. Where the essence of the wrong is that, without prior notice to or consultation with the employees' representative, the employer has appealed directly to employees and has unilaterally and arbitrarily promulgated conditions of work, it is obvious that the injury is not repaired merely by subsequent consultation or by restoration of the *status quo* as to working conditions after each incident. On the basis of petitioner's repeated unilateral acts (and indeed upon any of them) the Board was fully warranted in concluding, as it did, that petitioner had interfered with, restrained, and coerced its employees within the meaning of Section 8 (1) of the Act.

C. Petitioner's other interference, restraint, and coercion

Petitioner interfered with its employees' rights under the Act not only by the unilateral action described above, but also by opposition to employees' performance of their duties as Union officers and by efforts to procure employees' withdrawal from membership and activity in the Union.

Early in 1940, Henry J. Liegal, then a foreman, told employee Fisher, one of his subordinates, that if it were not for Fisher's union activities Liegal would be able to do something for him toward getting him a job he wanted as leadman on the afternoon shift then being set up (R. 325-326). Fisher was discharged in July 1940 and then, at the instance of a Union representative, reinstated to a job in another department (R. 327-331). Soon after Fisher was elected Union committeeman in January 1941, Powell, his foreman, repeated Liegal's earlier inducement and told Fisher that if he "would quit this union stuff," Powell would see that he was advanced to a better position (R. 331-332, 408-409). These offers of more favorable employment conditioned on Fisher's abandonment of his activity on behalf of the Union constituted the plainest kind of interference with employees' rights under the Act.²¹

²¹ *N. L. R. B. v. Acme Air Appliance Co.*, 117 F. (2d) 417, 420 (C. C. A. 2); *N. L. R. B. v. A. S. Abell Co.*, 97 F. (2d) 951, 955 (C. C. A. 4); *Triplex Screw Co. v. N. L. R. B.*, 117 F. (2d) 858, 860 (C. C. A. 6); *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87, 92 (C. C. A. 10); *N. L. R. B. v. Arcade Sunshine Co.*, 122 F. (2d) 964, 965 (App. D. C.), cert. denied, 313 U. S. 566.

When later, as noted (*supra*, p. 19), Fisher, having become chairman of the Union's committeemen, protested the circulation of the December 13, 1941, petitions, Plant Manager Newman accused him of being subversive and threatened his discharge. Both the accusation²² and the threat²³ were clearly coercive.

Night Superintendent Liegal, who as foreman had previously shown his hostility to Fisher's union activities (p. 22, *supra*) again objected to the efforts of a Union representative to carry out his duties, when in April 1942 employee Williamson, Union night shift committeeman, protested against what he considered unfair treatment of a fellow employee (R. 169-174). While Williamson was expressing his protest Liegal said to him, "You are one of these damned union agitators—you better be careful or you will know what I am going to do to you" (R. 174-175).²⁴ Although in making his protest Williamson appears to have made

²² *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 456 (C. C. A. 7), cert. denied 317 U. S. 650; *Reliance Mfg. Co. v. N. L. R. B.*, 125 F. (2d) 311, 314 (C. C. A. 7).

²³ *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76, 78 (C. C. A. 9); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 455 (C. C. A. 7), cert. denied 317 U. S. 650; cf. *N. L. R. B. v. Freuhauf Trailer Co.*, 301 U. S. 49; *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270.

²⁴ Williamson was thereupon discharged and his service record marked "Discharged, agitator" (R. 178-179). After a protest by the Union, Williamson was reinstated 2 weeks later, and his record changed to read "Disciplinary Lay-off—2 wks. without pay" (R. 181-182, 189). Williamson's discharge was alleged in the complaint to be a violation of Section 8 (3). As in the case of Fisher (*supra*, p. 9), the Board dismissed the complaint in this respect on the ground that the Union had not resorted to the arbitration machinery of the contract (R. 112).

extravagant charges against petitioner's management, Liegal's reference to Williamson as a "damned Union agitator" and his threat of disciplinary action went beyond anything justifiable by way of reply to Williamson and were directed generally against Williamson's activities as Union committeeman.²⁵ This interference with a Union representative's efforts to perform his duties clearly violates Section 8 (1) of the Act. *North Whittier Heights Citrus Assn. v. N. L. R. B.*, 109 F. (2d) 76, 78 (C. C. A. 9), cert. denied 310 U. S. 632; *Fort Wayne Corrugated Paper Co. v. N. L. R. B.*, 111 F. (2d) 869, 874 (C. C. A. 7); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 456 (C. C. A. 7), cert. denied 317 U. S. 650.

Petitioner's treasurer, William Shanahan, who had supervision over the timekeepers (R. 714), repeatedly interfered with Union committeemen in the performance of their duties. While serving as temporary committeeman for the timekeepers, employee Condon presented to Shanahan the grievance of one Hardman, who was about to be transferred to another department and wished to have his current wage review considered in the timekeeping department where he could profit by his seniority, rather than in his new department (R. 163-164). Shanahan told Condon that if a grievance was filed, Hardman would be "terminated," not transferred, and warned Condon that anyone who tried to do anything about the case "was liable to get into trouble" (R. 164, 731-733).

Shanahan showed his resentment toward employee Shannon, Union committeeman for the timekeepers,

²⁵ Petitioner's representatives have not been reluctant to make similar charges, see p. 9, *supra*.

because Shannon was not satisfied with a number of proposed individual wage increases, with the result that such cases were referred to the joint wage review committee for decision (R. 480-481, 719-722, 725-726). Shanahan told Shannon that he could not deal with him, warned him to stay out of certain departments where his duties as committeeman required him to go, and even urged him to "drop the whole thing or get out of the department" (R. 467-468, 470-471, 474-475). By restricting Shannon's access to other employees (*N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 251, 252; *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. (2d) 658, 660 (C. C. A. 2)) and otherwise opposing his efforts to perform his duties as union committeeman, petitioner engaged in interference, coercion, and restraint within the meaning of Section 8 (1) of the Act. See cases cited, *supra*, p. 22.²⁶ While Shannon doubtless pressed the wage demands of union members more assiduously than those of nonunion men, there is nothing in the record to support petitioner's contention (Brief, pp. 50-53) that Shanahan's remarks and conduct were occasioned by Shannon's discrimination against nonunion men.

Petitioner also interfered in matters of union administration which were of concern only to the Union, and by questioning employees and threatening their demotion attempted to procure their withdrawal from

²⁶ That Shannon may have mistakenly asked excessive wage increases for employees furnishes no excuse for petitioner's conduct, for the Act's protection obviously cannot be made to depend upon any nice calculation of the correctness of union demands. Cf. *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 457 (C. C. A. 7), cert. denied 317 U. S. 650.

the Union. Thus, upon his promotion to the position of assistant foreman, in which he was still eligible for union membership, H. M. Prior asked the Union to issue him a withdrawal card, which under standard trade union practice would carry with it certain reinstatement privileges (R. 312-313).²⁷ Under the Union constitution, withdrawal cards could be issued only to those supervisors who attained the rank of general foreman (R. 319-320). Accordingly, the Union refused Prior's request but informed him that he was at liberty to drop his membership if he chose (R. 313). Labor Relations Director Wiseman heard of the incident and on February 20, 1942, wrote the Union demanding that it immediately issue Prior a withdrawal card (R. 310-311). The issuance of withdrawal cards was obviously a matter of union administration in which petitioner had no legitimate interest and should not have interfered.

The contract between petitioner and the Union covered "all hourly-paid employees and salaried inspectors (except supervisory inspectors and confidential clerks)" (R. 426). Under the Union's constitution, certain other classes of employees were eligible to belong to the Union (R. 320).²⁸ Petitioner made and attempted to enforce the unwarranted claim that employees not covered by the contract should be excluded from membership in the Union. Thus in June

²⁷ See, e. g., Waldo R. Browne, *What's What in the Labor Movement*, p. 558.

²⁸ See United States Department of Labor, Bureau of Labor Statistics Memorandum No. 7, *Union Membership and Collective Bargaining by Foremen*, April 1943, p. 13; 12 L. R. R. 424.

1942, petitioner transferred to its administrative salaried pay roll a number of hourly-paid Union employees without changing the nature of their jobs (R. 242). The transfer apparently took these employees out of the unit covered by the contract (R. 426). When the Union objected, its representative was told that the action was taken in accordance with the policy expressed in a confidential memorandum which C. W. Perelle, petitioner's vice president in charge of production, sent to several of petitioner's officials (R. 245-248). The memorandum read as follows:

Attached you will find a list of names of people who are a part of your supervision, who are on the salary payroll, and who are still paying dues to the Union. Obviously, this is contrary to our policy.

It will be necessary for you to discuss with these individuals their wishes concerning their status as supervisory personnel, or their remaining a part of the Union set-up. They cannot do both. If the individual does not desire to discontinue his affiliation with the Union, he certainly cannot be permitted to retain his present position, but must be transferred back to a job commensurate with his ability and attitude concerning membership in the Union (R. 248).

Petitioner's reclassification of employees to take them out of the bargaining unit is obviously not explained or justified by the memorandum, the issuance of which was still another act of interference. Thus, in execution of petitioner's policy of restricting Union membership to the class of employees covered by the

contract, the memorandum directed that employees be questioned concerning their Union affiliation and "attitude concerning membership in the Union" and demoted unless they discontinued their affiliation with the Union. Both the questioning²⁹ and the threat of demotion³⁰ constituted interference, coercion, and restraint within the meaning of Section 8 (1) of the Act. Although these employees may have had supervisory status³¹ and been outside the plant bargaining unit³² they were none the less entitled to the protection of the Act against coercion and discrimination.³³

²⁹ *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518; *N. L. R. B. v. Hearst*, 102 F. (2d) 658, 662 (C. C. A. 9); *N. L. R. B. v. Bank of America*, 130 F. (2d) 624, 629 (C. C. A. 9), cert. denied 63 S. Ct. 992.

³⁰ *N. L. R. B. v. American Potash and Chemical Corp.*, 98 F. (2d) 488, 493-494 (C. C. A. 9), cert. denied 306 U. S. 643.

³¹ *N. L. R. B. v. American Potash and Chemical Corp.*, 98 F. (2d) 488, 493-494 (C. C. A. 9), cert. denied 306 U. S. 643; *N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 671 (C. C. A. 8); *Eagle-Picher Mining & Smelting So. v. N. L. R. B.*, 119 F. (2d) 903, 911 (C. C. A. 8).

³² *N. L. R. B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 23 (C. C. A. 9).

³³ It may be conceded that because an employer may be held responsible for unfair labor practices committed by supervisory employees he has a legitimate interest in preventing such employees from using their authority to influence their subordinates in their union affiliation or activity. Employer action directed specifically to that end is proper, as the Board has recognized. *Matter of Marshall Field & Co.*, 34 N. L. R. B. 1, 15-16; *Matter of Sherwin-Williams Co.*, 37 N. L. R. B. 260, 280. Petitioner here, however, has not claimed that its action was so motivated. There is no suggestion that Union membership of employees outside the contractual unit had caused, or was likely to cause, any difficulty, and it is clear that petitioner's objection to their Union membership was not so limited but was in fact founded on the broad and untenable position that it had the right to restrict Union membership to the employees covered by the contract.

Thus, while repeatedly taking unilateral action in derogation of the Union's representative status (*supra*, pp. 4-16), petitioner, acting through its supervisory officials, offered threats and inducements to procure employees' withdrawal from membership in the Union and activity on its behalf, and otherwise interfered in the affairs of the Union. The Board was fully warranted in finding, as it did, that petitioner thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

POINT II

The Board's order is valid and proper

Having found that petitioner had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Board was empowered to make an appropriate remedial order in the public interest (Section 10 (c)) (29 U. S. C. Sec. 160 (c)), notwithstanding the existence of a contractual or other remedy for the enforcement of private rights (*N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. (2d) 262 (C. C. A. 3); Section 10 (a) (29 U. S. C. Sec. 160 (a))).

The order requires petitioner to cease and desist from the unfair labor practices found and to post appropriate notices. Since petitioner has not only interfered with its employees' efforts to bargain collectively but has also by various methods, including threats of demotion and discharge, interfered with the right of self-organization in circumstances from

which the Board could find the threat of continuing and varying efforts to obtain the same end in the future, the general cease-and-desist order is proper. *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426; cf. *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, (C. C. A. 9). The notice provision is in the form approved by the Supreme Court in the *Express Publishing Co.* case, 312 U. S. 426, 439.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue denying the petition to review and set aside the Board's order, and granting enforcement of the order in full.

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SEPTEMBER 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*), are as follows:

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *

* * * *

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), * * * and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.





